No. 87-765

In the Supreme Court of the United States

OCTOBER TERM, 1987

ARMSTRONG RUBBER COMPANY; R. G. DeANGELO; and RUSSELL WEYMOUTH,
Petitioners,

vs.

LOCAL 670, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO; INTERNATIONAL UNION, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO; MILAN STONE; BOB G. LONG; and LOCAL 703, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether abuse of the court's discretion is the proper standard of review of F. R. Civ. P. Rule 19(b).

2. Whether a dispute is arbitrable when it concerns only internal union matters and is not embraced within the express terms of the parties' grievance-arbitration agreement.

LIST OF PARTIES

Petitioner Armstrong Rubber Company has no parent companies, subsidiaries, or affiliates to list pursuant to this Court's Rule 28.1.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioners, Armstrong Rubber Company, R. G. DeAngelo, and Russell Weymouth, petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Opinion of the Court of Appeals for the Sixth Circuit is reported at 822 F.2d 613, and is reprinted in the appendix at p. A1.

The memorandum decision of the United States District Court for the Middle District of Tennessee (Nixon, D.J.) has not been reported. It is reprinted in the appendix at p. A21.

JURISDICTION

Respondent Local 670 brought this action in the Middle District of Tennessee invoking federal jurisdiction under 28 U.S.C. §§ 1331 and 1337 and 29 U.S.C. § 185. See p. A32. On June 30, 1986, the Middle District granted petitioners' and Local 703's motions to dismiss finding it had no personal jurisdiction of Local 703 and that Local 703 was an indispensable party under F. R. Civ. P. 19(b). The court also concluded that Local 670's grievance was arbitrable. See p. A21.

On respondent Local 670's appeal, the Sixth Circuit entered an opinion on June 26, 1987 reversing the Middle District's order regarding Local 703's indispensability, affirming the court's order on arbitrability, and remanding the case for further proceedings. See p. A1. Petitioners sought rehearing *en banc* which was denied by the Sixth Circuit on August 13, 1987. See p. A59.

The jurisdiction of this Court to review the judgment of the Sixth Circuit is invoked under 28 U.S.C. § 1254(1).

RULE INVOLVED

F. R. Civ. P. 19. *Joinder of Persons Needed for Just Adjudication.*

(a) PERSONS TO BE JOINED IF FEASIBLE. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) DETERMINATION BY COURT WHENEVER JOINDER NOT FEASIBLE. If a person as described in subdivision (a) (1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment ren-

dered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) PLEADING REASONS FOR NONJOINDER. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) EXCEPTION OF CLASS ACTIONS. This rule is subject to the provisions of Rule 23.

STATEMENT OF THE CASE

Petitioner Armstrong Rubber Company has five plants located throughout the United States. A separate United Rubber Workers ("URW") local union represents employees at each plant. Respondent Local 670 represents employees at Armstrong's Nashville, Tennessee plant. Respondent Local 703 represents employees at the company's Hanford, California plant.

Under provisions of respondent URW's constitution, the five Armstrong local unions have assigned their bargaining rights to an International Policy Committee ("IPC") consisting of representatives from each of the Armstrong local unions and Bob G. Long, a URW representative who is the international coordinator for the Armstrong IPC. See p. A60.

In July, 1985, the petitioner and the Armstrong IPC negotiated the 1985 Master Agreement to remain in effect until July 15, 1988. In addition to provisions of universal application to all URW represented Armstrong employees, the 1985 Master Agreement authorizes each local union and each company plant to negotiate a supplemental agreement of local application *only*. Local supplemental agreements were negotiated for each location and also remain in effect until July 15, 1988.

In accordance with Article XIV, Section 56(a) of the 1985 Master Agreement, the 1985 Master Agreement (including the appropriate local supplemental agreements) was ratified by a majority of the Armstrong locals representing a majority of the membership. On July 17, 1985, the company and the Armstrong IPC signed the new 1985 Master Agreement and each local union and each company plant signed their new, local supplemental agreement.

Thereafter, Armstrong approached Local 703 about the possibility of negotiating an amendment to the Hanford, California local supplement. The company advised Local 703 that such an amendment containing economic concessions would be necessary in order to keep the Hanford plant open. On August 23, 1985, Local 703 and the company entered into a memorandum of agreement. See p. A66. The memorandum contained, among other things, a freeze on COLA and an agreement to forego further wage increases. By its own terms, the memorandum was subject to approval by a majority of all five local unions representing a majority of the Armstrong membership as well as the URW executive board. The Hanford memorandum agreement was not ratified by the required number of local unions.

On October 1, 1985, Armstrong issued Local 703 a six-month notification under the provisions of Letter # 1 to the 1985 Master Agreement. The purpose of the letter notice requirement is to permit the parties to explore possible means of averting closure.

On October 3, 1985, the company and Local 703 entered into a second memorandum of agreement which, among other things, amended provisions of the local wage agreement by reducing day work and anticipated incentive earnings rates. Contrary to the earlier August negotiations, this October 3 memorandum agreement, by its terms, was subject to approval by the membership of Local 703 and company officials *only*. See p. A68.

Despite the fact that the literal terms of the October 3 memorandum agreement did not require ratification by a majority of the five local unions representing a majority of the Armstrong membership, URW officials apparently presented the agreement to each of the locals for their approval. Although the memorandum agreement reportedly was not ratified by a majority of the five locals representing a majority of the membership, it was approved by a majority of Hanford Local 703.

By letter dated October 28, 1985, URW Vice President Johnston approved the October 3, 1985 Hanford memorandum agreement. Upon notification from Local 703 that the Hanford agreement had been approved as required by its terms and had received the approval of the URW, the company implemented the memorandum's provisions at the Hanford, California plant.

In giving URW approval to the October 3, 1985 memorandum agreement, URW Vice President Johnston was

carrying out the duties assigned him by URW President Milan Stone. The approval was a decision of the URW President within the meaning of Article IV, Section 3, paragraph (d) of the URW constitution and was appealable under the URW's internal procedures as set forth in its constitution.

On November 16, 1985, Nashville Local 670 appealed URW President Stone's decision to the URW executive board. Nashville Local 670 was joined in its appeal by URW Local 303 which represented employees at the Company's Natchez, Mississippi plant. The appealing locals contended that the URW could not approve the implementation of the October 3, 1985 Hanford memorandum agreement without that agreement being ratified by a majority of the Armstrong local unions representing a majority of the membership.

On December 6, 1985, the URW executive board denied the appeal in a written decision setting forth findings of fact, a discussion of the issues, and the board's conclusions. See p. A77. The board concluded that the local wage agreement which the October 3, 1985 memorandum agreement sought to amend was negotiated as, and remained a part of, the Hanford local supplemental agreement *only*. The board was guided by the principle that although master agreement language cannot be altered without the consent of a majority of the locals representing a majority of the membership, local supplemental language can be amended by mutual agreement between the affected local and the company *only*. The URW executive board found that all of the Armstrong local unions, including the two appealing locals, at one time or another had amended their local wage agreements

on a supplemental basis. The board also found that the 1985 Master Agreement specifically permitted such amendments by mutual agreement of the parties. The board determined that there was no language in the 1985 Master Agreement which precluded Local 703 and the company from amending the local wage agreement at the Hanford plant. The URW executive board concluded that the local wage agreement at issue was a part of the local Hanford supplemental agreement to which only the company and Local 703 were parties, that their mutual agreement as reflected in the October 3, 1985 memorandum agreement was sufficient to amend it, and that URW Vice President Johnston's decision to approve the Hanford memorandum agreement on behalf of the URW was proper.

On February 12, 1986, Nashville Local 670 filed a grievance report with the company under Article VI of the 1985 Master Agreement claiming (as it had before the URW executive board) that the October 3, 1985 memorandum agreement between the company and Hanford Local 703 had been "put into effect without securing the approval of the majority of the Union Locals representing a majority of the membership . . . ." Local 670's grievance report also claimed that the failure to submit the Hanford Local 703 memorandum agreement to a vote by all five locals caused the layoff of some Nashville Local 670 employees.

By letter dated February 24, 1986, Armstrong returned the original grievance report to Local 670 undocketed and unprocessed because Local 670's claims did not constitute a grievance as defined under Article VI of the 1985 Master Agreement.

Local 670 filed a complaint and motion for preliminary injunction on March 18, 1986 in the United States District Court, Middle District of Tennessee, Nashville Division claiming breach of contract by the company and breach of the duty of fair representation by the International and seeking to compel the company to arbitrate the plaintiff's grievance. See p. A32. Upon motions to dismiss filed by all defendants, the Middle District ordered that the action be dismissed unless Local 703 were joined as a defendant.

On May 13, 1986, Local 670 filed a second amended complaint adding Local 703 as a party defendant. Local 703 filed a motion to dismiss on June 10, 1986, contesting personal jurisdiction and venue. The Middle District granted Armstrong's and Local 703's motions to dismiss on June 30, 1986. See p. A21. The court held that it did not have personal jurisdiction over Local 703 and that Local 703 was an indispensable party to the action under F. R. Civ. P. 19(b). In its accompanying memorandum, the court concluded that Local 670's grievance was arbitrable.

Local 670 filed a notice of appeal to the Court of Appeals for the Sixth Circuit on July 14, 1986. Armstrong filed a cross-appeal on August 5, 1986. The Sixth Circuit entered an opinion on June 26, 1987. See p. A1. Armstrong's petition for rehearing was denied on August 13, 1987. See p. A59.

REASONS FOR GRANTING THE WRIT

I.

The Sixth Circuit's Use Of A De Novo Standard To Review A District Court's Determination Made In Equity And Good Conscience That An Action Should Be Dismissed Under F. R. Civ. P. 19(b) Presents A Conflict Among The Circuit Courts Of Appeals; Departs From Controlling Precedent; And Raises A Significant Issue Concerning The Proper Standard Of Review Which Should Be Addressed By This Court.

On June 30, 1986, after reviewing the evidence and hearing oral argument, the district court dismissed Plaintiff's complaint pursuant to Rule 19(b) on the grounds that the Court did not have personal jurisdiction over an indispensable party. The court, expressly addressing and considering the four factors outlined in Rule 19(b), was concerned that "both Local 703 and Armstrong Rubber Company would face risks of serious prejudice if this action proceeds without Local 703's participation." See p. A21.

The appellate court reversed and remanded the case for entry by the district court of an order compelling arbitration under circumstances "which will protect the interests of all involved parties." While acknowledging that it had earlier "implicitly adopted the abuse of discretion standard for Rule 19 issues," the court nevertheless concluded that "a determination that a party is 'indispensable,' thereby requiring dismissal of an action, represents a legal conclusion reached after balancing the prescribed factors under Rule 19." See p. A1. Therefore,

the court concluded that it was free to review the district court's decision *de novo*.

Petitioners respectfully contend that the Sixth Circuit's holding that Rule 19(b) indispensability is a conclusion of law and thus reviewable *de novo* conflicts with the unambiguous language of Rule 19. Moreover, the court's decision is reversible error because had the court applied the appropriate standard of review, it would have upheld the district court's dismissal of Plaintiff's complaint. The court's error warrants review by the Supreme Court on writ of certiorari because the decision of the Sixth Circuit conflicts with the decisions of other federal courts of appeal on the same matter and also because the Sixth Circuit has decided an important question of federal law which has not been, but should be, settled by this Court.

The Ninth Circuit, Fourth Circuit, Third Circuit, Second Circuit, and D.C. Circuit review Rule 19 dismissals for abuse of discretion. *See Arizona Laborers, Teamsters and Cement Masons Local 395 Health and Welfare Trust Fund v. Conquer Cartage Co.*, 753 F.2d 1512 (9th Cir. 1985); *Walsh v. Centeio*, 692 F.2d 1239 (9th Cir. 1982); *Coastal Modular Corp. v. Laminators, Inc.*, 635 F.2d 1102 (4th Cir. 1980); *General Tire & Rubber Co. v. Watkins*, 326 F.2d 926 (4th Cir. 1964); *Steel Valley Authority v. Union Switch and Signal Division*, 809 F.2d 1006 (3d Cir. 1987); *Envirotech Corp. v. Bethlehem Steel Corp.*, 729 F.2d 70 (2d Cir. 1984); *Cloverleaf Standardbred Owners Association, Inc. v. National Bank of Washington*, 699 F.2d 1274 (D.C. Cir. 1983).

Other courts do not expressly state that they are reviewing for abuse of discretion, but implicitly apply

that standard. *See Francis Oil & Gas, Inc. v. Exxon Corp.*, 661 F.2d 873 (10th Cir. 1981) (court remanded for Rule 19 determination with instructions that district court develop and then review a complete record).

The Eleventh Circuit and Fifth Circuit, however their review is characterized, appear to review Rule 19 determinations *de novo*. *See Challenge Homes, Inc. v. Greater Naples Care Center, Inc.*, 669 F.2d 667 (11th Cir. 1982); *Haas v. Jefferson National Bank of Miami Beach*, 442 F.2d 394 (5th Cir. 1971).

Moreover, as noted by at least one court, there is apparently an inconsistency of treatment within the jurisdictions themselves. *See Walsh v. Centeio*, 692 F.2d at 1241-42.

The appellate court's holding in this action evidences the inconsistency within the Sixth Circuit itself. Accurately citing *Jenkins v. Reneau*, 697 F.2d 160 (6th Cir. 1983), for the rule that Rule 19(b) decisions are reviewed for abuse of discretion, the Court also correctly notes that the Sixth Circuit has also, implicitly at least, reviewed Rule 19(b) decisions *de novo*. *See Smith v. United Brotherhood of Carpenters and Joiners of America, A.F.L.*, 685 F.2d 164 (6th Cir. 1982).

Petitioners contend, however, that this inconsistency does not support the court's holding that Rule 19(b) decisions are conclusions of law reviewable *de novo*. What it does suggest is that the issue of the appropriate standard of review is ripe for a determination by this Court.

The Supreme Court has not yet expressly addressed the question of the appropriate standard of review for Rule 19(b) decisions. In *Provident Tradesmens Bank*

& Trust Co. v. Patterson, 390 U.S. 102 (1968), this Court reiterated the factors courts must consider in deciding whether a party is indispensable. Referring to the factors set forth in Rule 19, as well the rule's reference to "equity and good conscience," the Court found that "indispensability" must be based on stated, pragmatic considerations. Reversing the Third Circuit, this Court held that the Third Circuit had failed to take all the legal factors into account and had ignored Rule 19's emphasis on pragmatism and flexibility. *See* 390 U.S. at 109. The Third Circuit had also apparently disregarded an evidentiary record which provided no factual support for the court's decision. *See* 390 U.S. at 112.

While the issue of the appropriate standard of review was not before this Court, it did implicitly suggest that the proper review was for abuse of discretion. *See, e.g.*, 390 U.S. at 118-19. *Provident Tradesmens* reinforced the Congressional intent reflected in the clear language of Rule 19 that Rule 19 decisions must be based upon equity and good conscience—that is, the discretion of the court of first instance.

Decisions under Rule 19(b) are not simply conclusions of law. Instead they are inquiries in which the court develops, weighs, and judges factual and equitable considerations within legal parameters. *See, e.g., Walsh v. Centeio, supra.* Under the abuse of discretion standard of review, an abuse of discretion occurs if a decision is clearly unreasonable, arbitrary or fanciful, or is based upon an erroneous conclusion of law, or where factual findings are clearly erroneous, or where the record contains absolutely no evidence upon which a court could rationally reach its decision. *See, e.g., Deitchman v. E.R.*

Squibb & Sons, Inc., 740 F.2d 556 (7th Cir. 1984); *Kern v. TXO Production Corp.*, 738 F.2d 968 (8th Cir. 1984); *Duran v. Elrod*, 713 F.2d 292 (7th Cir. 1983); *In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation*, 658 F.2d 1355 (9th Cir. 1981). It is not enough that the reviewing court would have reached a different result had it sat as the court of first instance or that reasonable persons could differ.

Obviously judicial discretion is not without bounds. One purpose of review under the abuse of discretion standard is to ensure that the district court has exercised its discretion within bounds—within the appropriate legal parameters. The reviewing court, under the abuse of discretion standard, reviews *de novo* the district court's legal conclusions to determine whether the court has framed its decision and its inquiry appropriately. *Cf. Cloverleaf Standardbred Owners Association, Inc. v. National Bank of Washington*, 699 F.2d 1274 (D.C. Cir. 1983).

If the lower court has correctly applied the law and rendered its decision within the appropriate framework, the reviewing court then turns its focus to the factual and equitable considerations upon which the court based its decision. Factual findings are reviewed under the very stringent clearly erroneous standard. *See, e.g., Christian Schmidt Brewing Co. v. G. Heileman Brewing Co., Inc.*, 753 F.2d 1354 (6th Cir. 1985). Purely equitable, pragmatic conclusions will not be overturned unless arbitrary or capricious. *See, e.g., Heat & Control, Inc. v. Hester Industries, Inc.*, 785 F.2d 1017 (Fed. Cir. 1986).

A reviewing court must apply the abuse of discretion standard to decisions that:

> have one or more of the following characteristics: the factors that are supposed to dominate the decision cannot be evaluated by the reviewing court; the decision is supposed to be made on the basis of subjective rather than objective factors—the individual judgment of the judge or administrator, rather than some articulable legal standard; uniformity among decisions is not important.

Mosey Manufacturing Co., Inc. v. National Labor Relations Board, 701 F.2d 610, 615 (7th Cir. 1983). The abuse of discretion standard is appropriate where a decision is based upon pragmatic or equitable considerations. *See id.; see also Heat & Control, Inc. v. Hester Industries, Inc., supra; Cloverleaf Standardbred, supra.*

Generally the appropriate remedy for an abuse of discretion (particularly where the lower court has misapplied the law) is remand to the district court for further proceedings or reconsideration in line with the reviewing court's directives. *See Collins v. Seaboard Coastline Railroad Co.,* 681 F.2d 1333 (11th Cir. 1982).

Legal conclusions are, of course, one aspect of the Rule 19 inquiry because the court must exercise its discretion within the proper legal framework. The district court must consider the legal factors enunciated in Rule 19 itself. An appellate court's review of the legal framework is in a sense *de novo* because no special deference for the lower court's understanding of the law is required. Abuse of discretion occurs where the district court has not applied the appropriate law, has not considered the Rule 19 factors.

In this case, however, the Sixth Circuit went further and held that Rule 19(b) decisions in their entirety are conclusions of law and reviewable *de novo*, asserting in effect that it was free to review the evidentiary record and equitable and pragmatic considerations *de novo*. Petitioners respectfully contend that as such the court's holding conflicts with the spirit of *Provident Tradesmens*, as well as Rule 19 itself, and invites review by this Court on writ of certiorari.

Some courts of appeals have found that they are free to consider Rule 19(b) claims *sua sponte*. *See, e.g., Wichita and Affiliated Tribes of Oklahoma v. Hodel*, 788 F.2d 765 (D.C. Cir. 1986); *McCowen v. Jamieson*, 724 F.2d 1421 (9th Cir. 1984). In these situations, however, an appellate court is not sitting as a reviewing court but as a court of first instance—as a district court. Like a district court it is free to develop the record and has the opportunity to conduct full evidentiary hearings. It is also not duplicating the efforts of another fully competent court. Furthermore, the court is not being called upon to question the judgment of another court. No matter what the standard may be, what defines review and limits its scope is the deference and respect shown by one court for another. When a court is not called upon to review, these concerns do not apply. Therefore, it is no rebuttal to petitioners' argument that appellate courts may consider *sua sponte* Rule 19 claims.

Petitioners respectfully request that this Court grant this writ of certiorari to address the appropriate standard of review for Rule 19(b) determinations.

II.

The Sixth Circuit's Decision That Armstrong Must Arbitrate An Internal Union Dispute Not Covered By The Parties' Grievance-Arbitration Clause Is In Conflict With Applicable Decisions Of This Court.

In its complaint, Local 670 contends that petitioner Armstrong breached the parties' master collective bargaining agreement by failing to arbitrate Local 670's "grievance." Local 670 stated its grievance in this way:

> In a document dated October 3, 1985, Armstrong Rubber Company entered into a memorandum of agreement with Hanford Local 703 providing for an across-the-board wage reduction of $2.89 per hour at Hanford. This agreement was then put into effect without securing the majority of the Union Locals representing a majority of the membership, and was, therefore, in violation of Section 18 and 56 of the 1985 Uniform Agreement. As a direct result of this action, 64 employees listed in Exhibit A were wrongfully laid off from the Nashville plant on December 10, 1985.

See p. A87.

Petitioner Armstrong denies that it breached its contractual duty to arbitrate grievances because the dispute described by Plaintiff is not a "grievance" as defined in the parties' collective bargaining agreement:

> A grievance is a complaint, dispute, or controversy *in which it is acclaimed that the Company has failed to comply with an obligation assumed by* it under the terms of this Agreement or the supplements thereto, *and* which involved either (1) a

> dispute as to the facts involved; (2) a question concerning the meaning, interpretation, scope, or application of this Agreement or the supplements thereto, or (3) both [emphasis added].

See p. A88.

Instead it is an internal union matter, involving alleged violations of the union's obligations to its locals and members and concerns the terms of the union constitution and not petitioner's duties under the collective bargaining agreement.

In rejecting petitioners' position that the dispute was not a grievance as defined in the parties' master agreement, both the appellate court and the district court appropriately began their analysis by examining and defining the "true nature" of the underlying dispute between the parties. Both courts erroneously concluded, however, that the dispute was a "grievance" as defined in the parties' collective bargaining agreement.

Petitioners respectfully contend that the appellate court misapplied the Trilogy's presumption of arbitrability because the court employed it to determine the "true nature" of the dispute, and not to construe the terms of an arbitration provision. *See United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960). The Sixth Circuit has, therefore, decided a federal question in a way which conflicts with applicable decisions of this Court. Moreover, the Sixth Circuit's decision that *Parker v. Local 413, International Brotherhood of Teamsters*, 501 F. Supp. 440 (S.D. Oh.

1980), *aff'd without opinion*, 657 F.2d 269 (6th Cir. 1981) is controlling and the court's findings of fact absent an evidentiary record are also reviewable error.

Determining whether the dispute at issue is actually a grievance is essential to the broader question of arbitrability because the parties' collective bargaining agreement permits only "grievances" to be arbitrated. Petitioners contend that the dispute is not arbitrable because it is a union matter. While the dispute may address "a question concerning the meaning, interpretation, scope, or application of this Agreement," it is not, and cannot be, a claim that "the *Company* has failed to comply with an obligation assumed by it under the terms of this Agreement . . . [emphasis added]." See p. A88.

Although Local 670 does not always consistently and clearly define the nature of its claim, its complaint indicates that the dispute concerns union member ratification procedures for, and the events preceding, implementation of another local union's local wage agreement. While, of course, various provisions of the collective bargaining agreement are relevant to that dispute, Local 670 admits in its brief to the Sixth Circuit that "[t]he execution of the Hanford Agreement without securing approval of a majority of the membership in a majority of locals in the 5-member Armstrong chain is the crux of the interests and claims asserted by the parties." That Local 670 understands approval and ratification to be the sole responsibility of, and an issue for, the international union is evident from Local 670's complaint, as well as from its initial decision to pursue the matter through union channels. Local 670 does not, and cannot, point to provisions of the collective bargaining agreement placing these responsibilities upon the employer.

Local 670 attempts to recharacterize its dispute with its union into a dispute with its employer over certain provisions of their agreement. Courts, however, will look beyond the style of an action or how it has been framed by the plaintiff to find the "true nature" of a claim. *See, e.g., Lodge No. 12 of District 37 v. FMC Corp.*, 551 F. Supp. 83 (S.D. Tex. 1982) (court went beyond breach of contract allegations to determine that it had no jurisdiction to decide what was in essence an unfair labor practice claim). Under the doctrine of "artful pleading," courts have permitted removal to federal court despite the characterization of the claims in a complaint. *See, e.g., Green v. Hughes Aircraft Co.*, 630 F. Supp. 423 (S.D. Ca. 1985). Here too then, the court is free to go beyond the language of the complaint to determine the "true nature," the substance, of Plaintiff's complaint.

Petitioners respectfully contend that a court is not free to employ the Trilogy's presumption of arbitrability when the court is initially determining the true nature of a labor dispute currently before it and not construing the scope of the arbitration clause. The Trilogy directs that arbitration clauses must be construed in such a way that all doubts are resolved in favor of coverage, unless "it may be said with positive assurance that the *arbitration clause* is not susceptible of an interpretation that covers the asserted dispute [emphasis added]." *Warrior*, 363 U.S. at 582-83. The Trilogy and their progeny do not stand for the proposition that courts must define or shape parties' disputes so that they will fit within the terms of an arbitration clause.

To push the Trilogy analysis (and presumption of arbitrability) one step back to the threshold issue of the nature of the dispute itself does violence to the

language and spirit of the Trilogy. As first established in *Warrior*, arbitration is a matter of contract, and does not exist as a matter of law. *See also AT&T Technologies, Inc. v. Communication Workers of America*, 475 U.S. ....., 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986). If the court is unwilling, independently and free of presumptions, to examine the true nature of Plaintiff's complaint, then any plaintiff is free to circumvent *Warrior* and unilaterally decide what disputes are arbitrable. Arbitration will become not a matter of agreement between the parties but a matter of careful and "artful" pleading by the plaintiff. The Sixth Circuit's application of the Trilogy's presumption when first analyzing the true nature of the union's complaint was in error.

In what was apparently an alternate basis for determining that Local 670 had stated a claim arbitrable under the collective bargaining agreement, the Sixth Circuit found that petitioner knew of the alleged ratification and voting irregularities and therefore could not rely in good faith on the International Union's assurances. Relying upon *Parker, supra,* the court held that the dispute was not an internal union matter (and thus non-arbitrable) based upon its own factual findings that petitioners participated in, or at least know of, the alleged violations of the union constitution.

Petitioners respectfully contend that the court's error is two-fold. First, the court made findings of fact essential to its holding defining the dispute without benefit of an evidentiary record. Neither the district court nor the appellate court conducted any evidentiary hearings or inquiries into the issue of petitioners' alleged knowledge or collusion. In fact, the matter was first raised in Local 670's brief to the Sixth Circuit. If a dispute concerning a

union's obligations to its members or locals can be transformed into a breach of contract action against the employer based on a collusion theory, then certainly it is reversible error for the appellate court to reach that conclusion absent a fully developed and briefed evidentiary record.

Evidentiary hearings on this narrow issue do not reach the *merits* of the underlying dispute to the extent that Local 670 characterizes the alleged dispute as concerning the nature and validity of a local wage agreement. Evidence of collusion or knowledge—or lack thereof—goes to the *nature* of the dispute which ultimately goes to the question whether the dispute is of a kind contemplated by the parties' arbitration clause.

The Sixth Circuit also misapplied *Parker*. In *Parker*, members of a union alleged that their union violated specific duties, including the duty of fair representation, and that it did so in collusion with the plaintiffs' employer who allegedly violated specific provisions of a collective bargaining agreement. In *Parker*, plaintiffs claimed that defendants implemented contract modifications without giving the employees a meaningful opportunity to ratify those modifications. Under the parties' collective bargaining agreement:

> [t]he Employer and the Local Union mutually agree that upon proper notice by the Employer to the Local Union and *upon fulfilling certain mutually agreed to standards*, break-bulk terminals may be established with a flexible work-week for dock and yard operations only [emphasis added].

Parker, 501 F. Supp. at 441.

In *Parker,* unlike this action, both the employer and the union were mutually responsible for establishing standards and procedures governing employee ratification of particular terms of the collective bargaining agreement. Despite the union's primary responsibility for ensuring employee ratification, it was easier for the *Parker* court to infer affirmative duties for the employer as well where the employer had actively worked in concert with the union to circumvent "mutually agreed to standards" for employee ratification. The Sixth Circuit's alternate route for defining Plaintiff's dispute as stating an arbitrable contract claim is in error and warrants review by this Court on writ of certiorari.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the opinion of the Sixth Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX

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RECOMMENDED FOR FULL TEXT PUBLICATION
See, Sixth Circuit Rule 24

(Filed June 26, 1987)

Nos. 86-5774; 86-5877

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LOCAL 670, UNITED RUBBER CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, in its own behalf and in behalf of its individual members,

Plaintiff-Appellant, Cross-Appellee,

v.

INTERNATIONAL UNION, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO; MILAN STONE; BOB G. LONG and LOCAL 703,

Defendants-Appellees,

v.

ARMSTRONG RUBBER COMPANY; R.G. DEANGELO and RUSSELL WEYMOUTH,

Defendants-Appellees, Cross-Appellants.

On Appeal from the United States District Court for the Middle District of Tennessee.

Decided and Filed June 26, 1987

Before: ENGEL and GUY, Circuit Judges; and PECK, Senior Circuit Judge.

GUY, Circuit Judge. Local 670 of the United Rubber, Cork, Linoleum and Plastic Workers of America (URW) appeals the dismissal of its hybrid breach of contract/duty of fair representation claim pursuant to section 301 of the Labor Management Relations Act, 29 U.S.C. §§ 185 and 159(a).[1] The district court, after a hearing on the matter, specifically found Local 670's grievance to be arbitrable but dismissed the suit in its entirety due to its inability to join a sister local out of California (Local 703), which the court found to be an indispensable party under Fed. R. Civ. P. 19 without which the court could not, in equity and good conscience, proceed. The employer, Armstrong Rubber Company (company) cross-appeals the finding of arbitrability. Although we agree that Local 670's claim is properly arbitrable, we find the district court's dismissal due to the absence of Local 703 improper under the circumstances of this case. Therefore, the decision below is affirmed in part and reversed in part, and the case is hereby remanded to the district court for further proceedings in accordance with this opinion.

I.

The facts relative to this appeal are simple and largely undisputed. Local 670, an unincorporated labor organization with principal offices in Madison, Tennessee, is one of five URW locals signatory to a master collective bargaining agreement with the company. Together the five locals comprise what is known as the "Armstrong chain," a nationwide group of local unions bargaining in concert with a common employer. The actual contract negotiating is conducted through the International Policy Com-

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1. This is an expedited appeal as of right pursuant to Rule 3(d) of the Federal Rules of Appellate Procedure, 28 U.S.C. § 1291 and 29 U.S.C. § 110.

mittee (IPC), on which each local has at least one representative. In addition to the single master agreement, each local union also enters into local supplemental agreements addressing issues specific to that local and supplementing, but not contradicting or amending, the master agreement.

The underlying dispute centers on events during and just after negotiations for the parties' 1985 master agreement. A few weeks after all parties had signed both the master agreement and all five local supplemental agreements, the company approached Local 703 of Hanford, California, in an attempt to enter into a wage reduction agreement with that local due to the unprofitability of the California plant. The company contended that, due to excess production capacity, the Hanford operation would be closed unless significant wage reductions were accepted. The company and Local 703 drafted two versions of the wage reduction agreement (the Hanford memoranda). The first Hanford memorandum provided that the agreement was "subject to approval by a majority of the local unions representing a majority of the membership and the International Executive Board." This memorandum was then submitted to a vote of the entire Armstrong chain and was soundly defeated. Immediately thereafter, the parties prepared the second Hanford memorandum with an even larger wage reduction objective than the first.[2] In this memo, however, there was no longer a statement regarding the necessity of majority approval. The agreement was framed as one involving "labor grade changes," stating as follows:

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2. It appears that this agreement effected approximately a $2.90 per hour wage reduction at the Hanford plant.

> [I]n accordance with longstanding and clearly established practices by the parties and consistent with the Collective Bargaining Agreement, the Company and Union have negotiated the following labor grade changes for each specific job classification listed below . . . .

Despite deletion of the approval language, the International again submitted this memorandum to a majority vote. It was again defeated by a majority vote of all five locals, although it was approved by a majority of the members of Local 703. At this point, and with the approval of the vice-president of the International, the company implemented the agreement.

It was and is Local 670's contention that, by the express terms of the 1985 master agreement, the company had no right to alter the basic wage structure of one local in a local supplemental agreement, and, further, that the only way that *any* local supplemental agreement can be altered is upon approval by a majority of the local unions representing a majority of the union membership in the Armstrong chain.[3] Because the Inter-

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3. This argument is based on Article VIII, Section 18, which provides, in relevant part: "The Basic Wage Rates in effect as of the effective date of this agreement shall remain in effect for the duration of this agreement;" and on Article XIV, Section 56 which reads, in pertinent part:

> Section 56—Effective Date, Amendment and Termination
>
> (a) This Agreement and each location's Supplemental Agreement, including any agreed upon changes, shall become effective at each plant at the time of ratification by the Local Union, provided this Agreement has been approved by a majority of the Local Unions representing a majority of the membership and the International Executive Board of the Union . . . .
>
> (b) This Agreement and the Local Supplements thereto, may be amended by mutual agreement between the parties.

national had been active in effecting the implementation of the Hanford agreement, Local 670 filed an internal union appeal against it for violations of Local 670's rights under the union constitution. The International Executive Board denied the appeal, stating in part that, since their "argument as to the proper interpretation of Paragraph 56 is obviously one of contract and not Constitutional interpretation . . . the proper remedy is to pursue the matter through the grievance procedure."[4]

On the day its internal union appeal was denied, the company laid off 64 members of Local 670. It is Local 670's contention that these layoffs were a direct result of the implementation of the drastic wage reductions accomplished by agreement with Local 703 in California. Local 670 then filed a grievance challenging the implementation of the Hanford memorandum and the attendant layoffs pursuant to Article VI of the master agreement.[5] The company refused to process the grievance, stating in part, "we do not think that Local 670, as a representative of the International, is in a position

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4. Among Local 670's allegations of unfair representation are charges relating both to the International Union's active assistance to Local 703 in implementing its wage reduction agreement as well as failure to provide requested documents relative to both its grievance and its internal appeal.

5. Article VI, Section 8, provides that:

> A grievance is a complaint, dispute, or controversy in which it is acclaimed that the Company has failed to comply with an obligation assumed by it under the terms of this Agreement or the supplements thereto, and which involved . . . (2) a question concerning the meaning, interpretation, scope, or application of this Agreement or the supplements thereto . . . .

Further, Article VI, Section 10 of the contract establishes a set panel of five arbitrators who will serve as arbitrators for the five Armstrong locals under the collective bargaining agreement; the contract also provides for final and binding arbitration.

to claim that a breach has occurred." Local 670 then initiated the instant suit, after which the company furloughed an additional 141 employees from the Madison, Tennessee plant, bringing the number of displaced workers to over two hundred.

Defendants interposed motions to dismiss for failure to state a claim and failure to join an indispensable party, Local 703. Although the court found that the complaint stated a claim and that the company should be ordered to submit the grievance to arbitration, it further found that Local 703 was an indispensable party within the meaning of Fed. R. Civ. P. 19(a) since "it is the other that Local 703 was an indispensable party within the meaning of Fed. R. Civ. P. 19(a) since "it is the other contracting party with the defendant, Armstrong Rubber Company, in the contract which is the subject of the grievance which the court is directing to be arbitrated." It therefore ordered Local 670 to join Local 703 within ten days. Local 670 issued a summons and complaint to Local 703, along with a letter in which it offered to arbitrate the grievance in California at Local 703's customary site for arbitrations. Although Local 703 did not respond to the offer to arbitrate in California, they did file a motion to quash the service of summons due to lack of personal jurisdiction.

After a further hearing, the district court issued its second order, concluding that the court lacked personal jurisdiction over Local 703 and that its presence was so essential to the proceedings that the court was unable to satisfactorily resolve the issues or fashion an adequate remedy in its absence. Noting that "it appears that Local 670 has the ability to pursue its claims elsewhere," the court dismissed the suit.

II.

Arbitrability of the Grievance

It is well-settled that while arbitration is a matter of contract, the question whether the parties have bound themselves contractually to arbitrate a particular dispute is a question for judicial determination. *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960). The court is to look to the language of the agreement to determine whether "it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. *Id.* at 582-83. Moreover, given the existence of an arbitration clause, a presumption of arbitrability arises, with all doubts resolved in favor of coverage. *AT&T Technologies, Inc. v. Communication Workers of America*, 106 S. Ct. 1415, 1419 (1986) (citing *Warrior & Gulf*, 363 U.S. at 582-83).

Looking to the parties' 1985 master agreement, we find that the arbitration clause, Article VI, Section 10, simply provides that any grievance which is not successfully resolved internally may be appealed to arbitration. A "grievance" is defined as:

> A complaint, dispute, or controversy in which it is acclaimed [sic] that the Company has failed to comply with an obligation assumed by it under the terms of this Agreement or the supplement thereto, and which involved [sic] either . . . (2) a question concerning the meaning, interpretation, scope, or application of this Agreement or the supplements thereto.

Local 670's grievance alleged that the company's actions violated Article VIII. Section 18, of the master agree-

ment, which addresses basic wage rates and provides that "[t]he Basic Wage Rates in effect as of the effective date of this agreement shall remain in effect for the duration of this agreement." It further alleged that the bilateral implementation of the Hanford agreement constituted a violation of Article XIV, Section 56, which provides procedures for amendment and termination of the agreement.[6] We agree with the district court's finding that the grievance involves a dispute as to the "meaning, interpretation, scope, or application" of the 1985 master agreement and, as such, is clearly subject to arbitration. As the Supreme Court has recently reaffirmed, the presumption of arbitrability applies when, as here, the agreement contains a broad arbitration clause and there is no "express provision excluding a particular grievance from arbitration." *AT&T Technologies,* 106 S.Ct. at 1419. The Court reiterated that, in such cases, "'only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail . . . .'" *Id.* (quoting *Warrior & Gulf,* 363 U.S. at 584-85).

The company's claim that this dispute is a non-arbitrable internal union matter is without merit. Because the second Hanford memorandum was approved for implementation by the International's vice-president, the company now alleges that ratification of the agreement was strictly a union matter. However, the International's involvement does not relieve the company, as a party to the 1985 master agreement, of its duties thereunder. It is apparent that the company was well aware of the initial attempts to obtain approval of the Hanford agreement by vote of the membership of all five locals; there-

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6. *See supra* note 3.

fore, it will not now be heard to say that it merely relied in good faith on assurances by the International concerning the required approval process. *See Parker v. Local 413, International Brotherhood of Teamsters,* 501 F.Supp. 440, 450 (S.D. Ohio 1980), *aff'd without opinion,* 657 F.2d 269 (6th Cir. 1981) (acquiescence in challenged conduct with full knowledge of facts is not "good faith" reliance on union representations).

III.

Joinder of Local 703 and Rule 19 Dismissal

Assessment of the question of joinder under Rule 19 involves a three-step process. Initially, the court determines whether a person who is not a party should be joined in the action if possible. This first step is embodied in Rule 19(a) as follows:

> (a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff

> but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

If the court determines that the person or entity does not fall within one of these provisions, joinder, as well as further analysis, is unnecessary. However, if the court finds one of the criteria is satisfied, the person is one to be joined if feasible and the issue of the existence of personal jurisdiction arises. If personal jurisdiction is present, the party *shall* be joined; however, in the absence of personal jurisdiction (or if venue as to the joined party is improper), the party cannot properly be brought before the court. If such is the case, the court proceeds to the third step, which involves an analysis of the factors set forth in Rule 19(b) to determine whether the court may proceed without the absent party or, to the contrary, must dismiss the case due to the indispensability of that party. The four factors set forth in Rule 19(b) include:

> first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoineder.

The rule is not to be applied in a rigid manner but should instead be governed by the practicalities of the individual case. *Provident Tradesmens Bank & Trust Co. v. Patter-*

son, 390 U.S. 102, 116 n.12 (1968). This court has noted that "[i]deally, all [the] parties would be before the court. Yet Rule 19 calls for a pragmatic approach; simply because some forms of relief might not be available due to the absence of certain parties, the entire suit should not be dismissed if meaningful relief can still be accorded." *Smith v. United Brotherhood of Carpensters and Joiners of America*, 685 F.2d 164, 166 (6th Cir. 1982) (holding it error to have dismissed Title VII case due to absence of contractors hiring through union).

Before turning to our Rule 19 analysis, two issues require some clarification: our standard of review and the importance of the context of this hybrid section 301/unfair representation claim. With respect to the appropriate standard of review, we observe that this court has implicitly adopted the abuse of discretion standard for Rule 19 issues. *See Jenkins v. Reneau*, 697 F.2d 160, 163 (6th Cir. 1983). However, this court and others have found "error" in a district court's dismissal under Rule 19 without resort to the abuse of discretion standard. *See United Brotherhood*, 685 F.2d at 166 (district court's dismissal was "error"); *Pasco International (London), Ltd. v. Stenograph Corp.*, 637 F.2d 496, 505 and n.22 (7th Cir. 1980) (same). Moreover, a determination that a party is "indispensable," thereby requiring dismissal of an action, represents a legal conclusion reached after balancing the prescribed factors under Rule 19. *See, e.g., Challenge Homes, Inc. v. Greater Naples Care Center, Inc.*, 669 F.2d 667, 669 n.3 (11th Cir. 1982). In that sense, it becomes a conclusion of law which this court reviews *de novo*. *Taylor and Gaskin v. Chris-Craft Industries*, 732 F.2d 1273, 1277 (6th Cir. 1984). We note in this regard that the district court's conclusion that it was Local 703's contract

with Armstrong that was "the subject of the grievance which the court is directing to be arbitrated" was also a conclusion of law reviewable by us *de novo*.

Insofar as context is concerned, it is important to keep in mind that this is a suit to determine whether the parties are required to submit their underlying dispute to arbitration, and not a ruling on the substantive dispute itself. Indeed, a court is *precluded* from ruling on the potential merits of the underlying claim. *AT&T Technologies,* 106 S. Ct. at 1419. Both this court and the district court have concluded that the dispute at issue is arbitrable. Under the parties' master collective bargaining agreement, to which all five locals are signatory, the parties have agreed to the voluntary dispute resolution process of binding arbitration. Arbitration takes place system-wide throughout the five-plant Armstrong chain, with an arbitrator chosen from a set panel of five persons agreed upon by all the parties.

This context is significant in at least two respects. First, unlike the vase majority of cases under Rule 9, in which the merits of a particular dispute are to be reached in the same forum which is applying Rule 19, here there is inevitably a two-tiered process. The role of the district court is solely to determine whether the parties have agreed to arbitrate a given dispute, whether there has been a breach of that agreement, and to compel arbitration if the answer to both of these questions is affirmative. The second tier occurs when, after the district court compels arbitration, the arbitrator adjudicates the parties' substantive claims pursuant to the voluntary dispute resolution process already agreed to by the parties. As a practical matter then, Local 703's substantive rights ultimately can be determined only by a procedure to which it

already voluntarily has committed itself as one of five local unions in the Armstrong chain.

Second, the context is significant because of the compelling federal labor policy of requiring parties to honor their promises to arbitrate. The Supreme Court established long ago that an employer could be compelled to arbitrate a jurisdictional dispute, in which two separate unions laid claim to the same work under two different collective bargaining agreements, when only one of the unions was before the court. The Court reasoned:

> To be sure, only one of the two unions involved in the controversy has moved the state courts to compel arbitration. So unless the other union intervenes, the adjudication of the arbiter might not put an end to the dispute. *Yet the arbitration may as a practical matter end the controversy or put into movement forces that will resolve it.*

Carey v. Westinghouse Electric Corp., 375 U.S. 261, 265 (1964) (emphasis added). Despite the possibility of a conflicting subsequent award, and implicitly, despite the absent union's interest, the Supreme Court in *Carey* held that the employer was compelled to arbitrate. The Court's focus on the practical realities of the arbitration process underscored the "pervasive, curative effect" of the voluntary dispute resolution process lying at the heart of federal labor relations. *Id.* at 272.[7] The facts of the

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7. Since this case arose in state court, no explicit Rule 19 analysis was applied. However, the Court's rationale and its recognition of the unique aspects of the labor arbitration context are highly relevant to Rule 19 analysis. The District of Columbia Circuit recently relied on *Carey* in holding that the lower court erred in enjoining a scheduled arbitration because of the possibility that a party would be subject to inconsistent arbitration awards. *In re Meba Pacific Coast District*, 114 L.R.R.M. 3431, 3436 (D.C. Cir. 1983).

present case must be analyzed against the foregoing backdrop.

A. *Is Local 703 a "Party to be Joined if Feasible"?*

This is an extremely close issue. Local 703 clearly does not satisfy the criteria of Rule 19(a)(1) because complete relief (i.e., an order either compelling or denying arbitration) can be accorded to the parties before the court. However, under Rule 19(a)(2), Local 703's interest in upholding the validity of its wage reduction agreement and, thereby, the continuation of its workers jobs, is sufficiently "related to" the subject of the action (the question of arbitrability) to make its joinder desirable. Further, we find that the company's risk of incurring inconsistent obligations as a result of arbitrating the question of the validity of its subsequent bilateral agreement without Local 703's presence also renders joinder the preferable course. Local 670 argues persuasively that the company's risk would *not* be substantial, due to the deference traditionally accorded previous arbitration findings as well as principles of collateral estoppel potentially applicable to Local 703 in the face of its refusal to intervene in a proceeding which affects its interest in the contract and of which it clearly had notice. However, we do not consider it wise to subject the company to even this level of risk where, as here, it is easily avoided.[8]

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8. We stress that we consider it highly questionable whether Local 703 even qualifies as a person to be joined if feasible under Rule 19(a). However, Local 670 has voluntarily offered to participate in the arbitration proceeding in California, Local 703's home state. Therefore, due to the ease of fashioning relief under Rule 19(b) which will serve the interests of all the parties involved, we assume, without deciding, that Local 703 qualifies for joinder under Rule 19(a).

B. *Could the Court Obtain Personal Jurisdiction Over Local 703?*

We answer this question in the negative. In ruling on the jurisdictional issue, the district court interpreted section 301(c), 29 U.S.C. § 185(c), by its literal terms as defining the court's jurisdiction for the action to which Local 703 was joined.[9] The court then held that under the guidelines of section 301(c) it did not have jurisdiction over Local 703 and, therefore, it could not properly be joined in the action.

The parties now dispute whether section 301(c) is truly a jurisdictional statute or one which merely establishes proper venue for suits by and against labor organizations. Several courts have held, explicitly or implicitly, that the statute relates only to venue, and does not confine the jurisdictional inquiry. *See, e.g., Barefoot v. International Brotherhood of Teamsters,* 424 F.2d 1001, 1002 (10th Cir. 1970) (section constitutes venue provision); *United Rubber, Cork, Linoleum and Plastic Workers of America v. Lee Rubber and Tire Corp.,* 394 F.2d 362, 364 (3d Cir.), *cert. denied,* 393 U.S. 835 (1968) (Congress referring to venue rather than jurisdiction); *American Federation of Labor v. Western Union Telegraph Co.,* 179 F.2d 535, 536 (6th Cir. 1950) (section sets forth where such actions may be *brought*). However, the analysis

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9. Section 301(c) provides:

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

required under either section 301(c) or the traditional rules of "minimum contacts" is so similar as to render this issue a distinction without a difference.[10]

The trial court's analysis under section 301(c) included a consideration of Local 703's alleged "contacts" with Tennessee, including the facts that (1) it was a signatory of the 1985 master agreement; (2) it is a member of the IPC of the International Union; and (3) representatives of the International visited Tennessee "on Local 703's behalf" to advocate their position. The court found these contacts insufficient under section 301(c) and, in addition, declined to assert jurisdiction on the basis of Local 703's affiliation with the International alone, since such a ruling would obligate each local to defend lawsuits in every state in which the International has done business.[11] We agree.

We acknowledge that the absence of physical contacts alone will not defeat jurisdiction if a commercial actor has purposefully directed activities toward out-of-state citizens and litigation results from injuries arising out

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10. In support, we observe that Rule 19(a) specifically provides for the dismissal of a desirable party, upon objection, in all cases where "joinder would render the venue of the action improper."

11. We do not mean to imply that an International Union cannot exercise sufficient control and dominion over its member locals as to support a finding that they effectively act as an agent for each individual local in dealing with other locals. Such a theory might prevail upon a showing that the International so substantially participated in, condoned, ratified, or aided a particular local at the request or instigation of the local, as to impute the International's actions for its benefit to that local. *See Bacino v. American Federation of Musicians*, 407 F.Supp. 548, 553-54 (N.D. Ill. 1976). However, the International's actions here, which apparently consisted of polling the individual locals on their views as to whether Local 703's wage agreement was required to be put to a vote of all five units, does not rise to the requisite level to invoke agency status.

of, or relating to, those activities. *See Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 476 (1985). However, Local 703 does not fit the traditional mold of a "commercial actor" in that its acts do not result in generating profit for its members by virtue of its out-of-state solicitations. Further, we cannot find that Local 703 in any sense "purposefully availed" itself of the privilege of conducting activities in Tennessee. *See Asahi Metal Industry Co., Ltd. v. Superior Court of California,* 107 S. Ct. 1026 (1987); *World-Wide Volkswagen Corp. v. Woodsen,* 444 U.S. 286 (1980). In sum, we find Local 703's contacts with Tennessee to have been so attenuated as to insulate it from being forced to submit to suit there via the application of either section 301(c) or Tennessee's long-arm statute.[12] *International Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945).

C. *Was Local 703 an Indispensable Party?*

Analysis of the four factors of Rule 19(b) compels the conclusion that Local 703 was *not* an indispensable party to this action. In this regard, it is crucial to understand that Local 703's interest is its presence, not in the federal district court proceeding to compel arbitration, but in the actual arbitration that may affect any sub-

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12. In pertinent part, Tenn. Code Ann. § 20-2-214 (1980) provides:

> 20-2-214 *Jurisdiction of persons unavailable to personal service in state—classes of actions to which actionable.*—(a) Persons who are nonresidents of Tennessee and residents of Tennessee who are outside the state and cannot be personally served with process within the state are subject to the jurisdiction of the courts of this state as to any action or claim for relief arising from:
>
> . . . .
>
> (6) Any basis not inconsistent with the constitution of this state or of the United States;

stantive rights it has regarding the Hanford agreement. This is the point which was misapprehended by the district court and which led it to conclude that Local 703 was an indispensable party to *this* action. The contract between Local 703 and Armstrong is *not* the contract which is the subject of Local 670's grievance here. Rather, the company's negotiation of that side agreement is merely the factual predicate for its claim that the company breached its master collective bargaining agreement *with Local 670*. So understood, it becomes clear that the contract between Local 703 and Armstrong is wholly collateral to the issue in this proceeding, which is the arbitrability of the alleged breach of the contract between the company and Local 670.

As counsel for Local 670 pointed out in oral argument, this is a two-tiered proceeding. In this first tier, no conclusion is reached as to the substantive rights of *any* of the parties. Our *sole* task is to determine whether Local 670 has succeeded in demonstrating that it and the company intended that this breach of contract claim be resolved through the process of arbitration. While Local 703's presence at the arbitration proceeding may arguably be deemed "indispensable," that is not a question before the court at this time. Local 703's interest in *this* proceeding is adequately represented by the company, which has the identical interest in not only avoiding arbitration, with its attendant risk of voiding the Hanford agreement, but also in proceeding to arbitration, if necessary, in a location where Local 703 may participate so that the rights and duties of the company with respect to both locals can be effectively determined. Clearly, then, the districtt court erred in this portion of its analysis by looking solely to the consequences of the sub-

stantive outcome of an arbitration hearing conducted in Local 703's absence.[13]

The second provision of Rule 19(b) specifically confers upon the court the power to include "protective provisions in the judgment" to lessen or avoid any prejudice. Here, any prejudice to Local 703 of participating in an arbitration proceeding in Tennessee can be totally eliminated by ordering that the arbitration be held in California, a proposal already advanced by Local 670.[14] Such an order would be adequate to insure that the interests of all three parties are protected in the subsequent arbitration proceeding, thereby satisfying the third Rule 19(b) factor.

Finally, although it appears that Local 670 did have an alternate forum available at the time of the district court's dismissal, which occurred approximately four and one-half months after the likely accrual date of its cause

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13. Illustratively, the court stated that: "Although concerned with the loss of jobs by the workers represented by Local 670, the Court shares the same concern for the welfare of the workers at Armstrong's Hanford, California plant. Specifically, this Court is concerned that a ruling in Tennessee may result in job losses at the Hanford plant, despite the lack of any participation by Local 703 in the Tennessee decision-making process."

14. Local 670 additionally proffers the suggestion that the district court direct the company and Local 670 to agree that the company would petition the arbitrator unopposed for an interpleader to compel Local 703's attendance as a party to the arbitration. Given that all the parties are signatories to the same master agreement, which gives a panel of designated arbitrators the commission to issue final and binding resolutions, it does not appear that an arbitral interpleader would face any jurisdictional bars. However, this is an issue for the district court to consider and, in view of the fact that we have indicated that the arbitration should be ordered conducted in California, any further attempt to insure Local 703's presence may be superfluous.

of action, *see DelCostello v. International Brotherhood of Teamsters,* 462 U.S. 151 (1983), that possibility was not clearly established. Upon filing in another court, Local 670 could have been subjected to claims of a statute of limitations bar depending on the date on which its claim was held to have begun accruing. *See Shapiro v. Cook United, Inc.,* 762 F.2d 49 (6th Cir. 1985) (claim accrues under section 10(b) when party discovers, or should have discovered, acts constituting alleged violation). Moreover, the potential existence of another forum does not, in and of itself, outweigh a plaintiff's right to the forum of his or her choice. Some additional interest of either the absent party, the other properly joined parties or entities, or the judicial system must also be present. *Pasco International,* 637 F.2d at 501.

Based on the foregoing, this case is REMANDED to the district court for the entry of an appropriate order compelling arbitration under circumstances which will protect the interests of all involved parties. It will further be neeessary for the district court to address Local 670's other contentions and claims for relief, e.g., its requests for the production of documents, injunctive relief, and damages, in conjunction with its order. We leave resolution of these ancillary matters to the district court's discretion.

(Entered July 7, 1986)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF TENNESSEE,
NASHVILLE DIVISION

Docket No. 3-86-0253

LOCAL 670, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA

vs.

ARMSTRONG RUBBER COMPANY, ET AL.

ORDER

For the reasons discussed in the accompanying Memorandum, this Court HOLDS that it does not have personal jurisdiction of Local 703, and that it is an indispensable party under Fed. R. Civ. P. 19(b) without which this action cannot proceed. Accordingly, Armstrong Rubber Company's Rule 12(b)(7) motion to dismiss is GRANTED and this action is hereby DISMISSED.

Entered this the 30th day of June, 1986.

/s/ John T. Nixon
United States District Judge

(Entered July 7, 1986)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF TENNESSEE,
NASHVILLE DIVISION

Docket No. 3-86-0253

LOCAL 670, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA

vs.

ARMSTRONG RUBBER COMPANY, ET AL.

MEMORANDUM

On April 22, 1986, Armstrong Rubber Company ("Armstrong" or "the Company") filed a motion to dismiss under Rules 12(b)(6) and 12(b)(7) of the Federal Rules of Civil Procedure. The Court has previously DENIED the Company's Rule 12(b)(6) motion to dismiss for failure to state a claim after concluding that the issues raised by Local 670's grievance were arbitrable. In conjunction with the Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19, the Court has previously ruled that Local 703 should be joined, if feasible, pursuant to Rule 19(a). This Memorandum and accompanying Order now address the question of whether or not the Court has personal jurisdiction, and, if it does not have such jurisdiction, whether or not Local 703 is an indispensable party under Rule 19(b) without which this action cannot proceed.

I. FACTS

Local 670 is the local bargaining representative for the workers at the Armstrong Rubber Company plant located in Madison, Tennessee. Local 703 is the local bargaining representative for the workers at Armstrong's Hanford, California plant. Three other local unions, together with Local 670 and Local 703, combine to represent all of the workers at the five Armstrong plants located throughout the United Staates. All five of these locals belong to the United Rubber, Cork, Linoleoum, and Plastic Workers of America (hereinafter the "International Union").

In July of 1985, a master collective bargaining agreement was finalized and signed by representatives of the Company, the International Union, and the five local unions. Shortly thereafter, the Company announced plans to close its Hanford, California plant. In response, Local 703 and Armstrong entered into a $2.89 per hour wage cut for the Hanford workers, thereby keeping the Hanford plant open. This wage reduction agreement is at the center of the present controversy. Local 670 has taken the position that this agreement violates the terms of the July, 1985 master bargaining agreement and that it has directly resulted in the loss of jobs in Tennessee by the workers represented by Local 670.

In support of its position, Local 670 filed a grievance with Armstrong. This grievance specifically stated:

> In a document dated October 3, 1985, Armstrong Rubber Company entered into a memorandum of agreement with Hanford Local 703 providing for an across-the-board wage reduction of $2.89 per hour at Hanford. This agreement was then put into effect with-

> out securing the opproval of the majority of the Union Locals representing a majority of the membership, and was, therefore, in violation of section 18 and 56 of the 1985 Uniform Agreement. As a direct result of this action, the 64 employees listed in Exhibit A were wrongfully laid off from the Nashville plant on December 10, 1985.

In response to the Company's refusal to submit this grievance to arbitration, Local 670 thereupon filed this action to compel arbitration, for other injunctive relief, for a declaratory judgment, and for monetary relief.

There have been a series of hearings in this matter. The Court first heard argument on April 24, 1986 on the issue of arbitrability. The Court subsequently informed the parties that it had determined that the issues raised in Local 670's grievance were arbitrable. The parties then filed briefs and, on May 6, 1986, oral argument came to be heard on the question of whether Local 703 should be joined as a party, if feasible, pursuant to Fed. R. Civ. P. 19(a). The Court, by Order entered May 9, 1986, concluded that Local 703 should be joined, if feasible. Upon being served with a summons, Local 703 responded by filing a motion to dismiss and/or quash return of service of summons. On June 16, 1986, a hearing was held on this issue. For the reasons discussed hereunder, Local 703's motion to dismiss is GRANTED and this action is DISMISSED because the Court finds that Local 703 is an indispensable party under the provisions of Rule 19(b).

II. ARBITRABILITY OF ISSUES RAISED IN LOCAL 670's GRIEVANCE

As noted above, Local 670 filed a grievance with Armstrong in which it alleged that the wage reduction

agreement between Local 703 and the Company violated the terms of the July, 1985 master collective bargaining agreement. The Company subsequently refused to submit the grievance to arbitration alleging that the grievance was not arbitrable under the parties' bargaining agreement.

In *United Steelworkers of America v. Warrior Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960), the Supreme Court noted that where a collective bargaining agreement contains an arbitration clause, "[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." That Court went on to state that "[i]n the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where . . . the arbitration clause [is] quite broad." *Id.* at 584-85. In defining what constitutes an arbitrable grievance, Article VI, Section 8 of the Collective Bargaining Agreement broadly provides that:

> A grievance is a complaint, dispute, or controversy in which it is acclaimed that the Company has failed to comply with an obligation assumed by it under the terms of this Agreement or the supplements thereto, and which involved . . . (2) a question concerning the meaning, interpretation, scope, or application of this Agreement or the supplements thereto . . . .

Inasmuch as the interpretation of Article VII, Section 18 of the parties' bargaining agreement lies at the very core of this controversy, this Court has concluded that

plaintiff's grievance is arbitrable and, therefore, has found the Company's Rule 12(b)(6) argument to be without merit.

III. JOINDER IF FEASIBLE PURSUANT TO RULE 19(a)

On May 6, 1986, oral argument came to be heard on the Company's 12(b)(7) claim—failure to join a party under Rule 19. After giving due consideration, this Court entered an Order on May 9, which provided, in part, that "Local 703 of the United Rubber, Cork, Linoleum and Plastic Workers of America is an indispensable party within the meaning of Rule 19(a) of the Federal Rules of Civil Procedure." The Order further stipulated that the Court would dismiss the action unless plaintiff joined Local 703 as a party defendant to the action. In order to remove any possible misunderstanding, and in response to Local 670's motion to clarify, the Court now explains its May 9 Order.

Rule 19(a), entitled "Persons to be Joined if Feasible," provides in pertinent part:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence, complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest of (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

At issue in the present controversy is whether or not the defendant Company and Local 703 (with the evident approval of the International Union) entered into a wage reduction agreement that violated the parties' 1985 collective bargaining agreement. This Court is convinced that any ruling, through arbitration or otherwise, that is made without the participation of Local 703 and that regards the validity and effect of the wage reduction agreement might "as a practical matter impair or impede Local 703's ability to protect [its] interest." Specifically, the arbitrator could decide that the wage reduction agreement entered into between the Company and Local 703 violated the parties' bargaining agreement. Such a result obviously could have a profound effect upon jobs at Local 703's Hanford plant. The Court additionally concludes that Armstrong Rubber Company, under the language of Rule 19(a)(2)(ii), could be "subject[ed] to a substantial risk of incurring . . . inconsistent obligations" if Local 703 is not joined as a party to this action. This situation could arise if an arbitrator, as part of some later-filed suit by Local 703 in California, were to find the Hanford wage reduction agreement valid after an opposite ruling had been made by the arbitrator in the present action. This Court, in its May 9 Order, ruled that Rule 19(a) requires Local 703 to be joined, if feasible, as a defendant in this action.

IV. JURISDICTION OF THE COURT UNDER 29 U.S.C. § 185

The Court entered an Order on May 9, 1986 that required plaintiff to join Local 703 as a party defendant to this action. A summons was served on Orville Davis, the President of Local 703. Local 703 responded by filing

a motion to dismiss and/or quash return of service of summons. After reviewing the memoranda and affidavits related to this matter submitted by both parties, the Court finds that it lacks personal jurisdiction over Local 703.

The jurisdiction of the Court in this matter is governed by 29 U.S.C. § 185(c):

> For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers of agents are engaged in representing or acting for employee members.

Local 703 plainly does not maintain its principal office in this district. Its principal office is in Hanford, California. Accordingly, the Court has jurisdiction over Local 703 under subsection (c)(2) only if duly authorized officers or agents of Local 703 are engaged in representing or acting for its employee members in this district.

The Court holds that this provision has not been satisfied. Local 703 has no representational obligations, by contract or by federal labor policy, that must be performed in Tennessee. Further, it has no employees and no duly authorized representatives acting on its behalf in Tennessee. Simply stated, Local 703 has no business, union or otherwise, in Tennessee, and it has not attempted to gain such opportunities.

The activities of the International Union in Tennessee do not establish jurisdiction over Local 703. Under federal law, Local 703, even though affiliated with the International Union, is an independent entity. *See Bacino*

v. American Federation of Musicians, 407 F. Supp. 548, 553 (N.D. Ill. 1976). Though the International Union may act for Local 703 in a limited number of circumstances, there is no evidence that the International Union has acted as agent for Local 703 for purposes of establishing personal jurisdiction in this matter. The Court does not have jurisdiction solely on the basis of Local 703's affiliation with the International Union. Such a rule would obligate Local 703 to defend lawsuits in every state in which the International Union has done business.

Plaintiff contends that the Court has jurisdiction on the ground that the interests of Local 703 inextricably are bound up in the dispute that is at the center of this action. Specifically, it points out that Local 703 has the following "contacts" with Tennessee: (1) it was a signatory of the 1985 master collective bargaining agreement; (2) it is a member of the International Policy Committee of the International Union; and (3) representatives of the International Union have visited Tennessee to advocate the position of Local 703. The Court finds that these grounds are insufficient to satisfy the requirements of 29 U.S.C. § 185(c)(2). In sum, the Court lacks personal jurisdiction of Local 703.

V. INQUIRY INTO INDISPENSABILITY UNDER RULE 19(b)

Rule 19(b) of the Federal Rules of Civil Procedure provides that

> [i]f a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus

> regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

The Court, in a previous section, concluded that Local 703 does not fall within the personal jurisdiction of this Court and, therefore, cannot be made a party to this action. It therefore becomes necessary to determine under Rule 19(b) whether this action can proceed in the absence of Local 703 or whether it is an indispensable party such that its absence requires the dismissal of this action.

The first factor under Rule 19(b) to consider when making the above determination is the extent of prejudice either to the absent party (Local 703) or to those already parties (Local 670, the International Union, or Armstrong) that might result from a judgment rendered without Local 703's presence. As discussed earlier, the Court finds that both Local 703 and Armstrong Rubber Company would face risks of serious prejudice if this action proceeds without Local 703's participation. Although concerned with the loss of jobs by the workers represented by Local 670, the Court shares the same concern for the welfare of the workers at Armstrong's Hanford, California plant. Specifically, this Court is concerned that a ruling in Tennessee may result in job losses at the Hanford plant, despite the lack of any participation by Local 703 in the Tennessee decision-making process.

Consideration into the final three factors enumerated under Rule 19(b) likewise does not support allowing the action to proceed in Local 703's absence. The Court does not find this to be the type of case in which relief can be shaped to lessen or avoid the prejudice that might result from proceeding in Local 703's absence. As noted earlier, at the crux of this controversy is the question of the validity of the wage reduction agreement entered into between Local 703 and Armstrong. By the very nature of the interests involved, any ruling most likely will result in the loss of jobs either in Madison, Tennessee or in Hanford, California. Thus, the Court cannot foresee relief that would have the effect of lessening or avoiding the prejudice. As to the third factor, it has been noted earlier that a ruling in Local 703's absence may not be adequate both because of the possible prejudice to the workers represented by Local 703 and because of the possibility that Armstrong might later be subjected to conflicting and inconsistent obligations. Finally, it appears that Local 670 has the ability to pursue its claims elsewhere and, therefore, has "an adequate remedy if the action is dismissed for nonjoinder."

Because this Court does not possess personal jurisdiction over Local 703, and because this Court has found under Rule 19(b) that Local 703 is an indispensable party to this action, this case is hereby DISMISSED.

An Order will be entered contemporaneously with this Memorandum.

Entered this the 30th day of June, 1986.

/s/ John T. Nixon
United States District Judge

(Filed March 18, 1986)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF TENNESSEE
NASHVILLE DIVISION

No. 3860253

JURY DEMAND

LOCAL 670, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS of AMERICA, in its own behalf and in behalf of its individual members,
Plaintiffs,

v.

ARMSTRONG RUBBER COMPANY; R.G. DeANGELO, JR.; RUSSELL WEYMOUTH; INTERNATIONAL UNION, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS of AMERICA, AFL-CIO, CLC; MILAN STONE, President of the International; and BOB G. LONG,
Defendants.

VERIFIED COMPLAINT

Local 670, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, CLC ("Local 670"), an unincorporated association, in its own right and in behalf of its individual members, hereby files its complaint against Armstrong Rubber Company; R.G. DeAngelo, Jr.; Russell Weymouth; International Union, United Rubber,

Cork, Linoleum and Plastic Workers of America, AFL-CIO, CLC ("International" or "URW"); Milan Stone; and Bob G. Long and alleges as follows:

NATURE OF ACTION

1. This action is brought pursuant to 29 U.S.C. § 185, 29 U.S.C. § 411, 29 U.S.C. § 501, and the judicially-created duty of fair representation arising from 29 U.S.C. § 159(a) and cognizable under 28 U.S.C. §§ 1331 and 1337, to compel enforcement of a collective bargaining agreement, to obtain other injunctive relief and to obtain monetary relief, including costs and attorney's fees, with regard to a combination or conspiracy to deprive Local 670 and its members of rights guaranteed by contract and federal labor laws.

JURISDICTION AND VENUE

2. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 1337, 2201 and 2202 and 29 U.S.C. §§ 185, 412 and 501, in that this is to compel arbitration, for other injunctive relief, for declaratory judgment, and for monetary relief, including costs and attorney's fees, for breach of a collective bargaining agreement; for breach of, and conspiracy to breach, the duty of fair representation; for breach of fiduciary duty; and for the denial of equal rights to participate in union decisionmaking, all in violation of federal labor law.

3. The Court has personal jurisdiction over each defendant and venue is proper in the Middle District of Tennessee pursuant to 28 U.S.C. § 1391(b) and (c); 29 U.S.C. § 185(a) and (c); 29 U.S.C. § 412 and 29 U.S.C. § 501(b). The causes of action arose in this judicial district, where duly authorized officers or agents of Local

670 are engaged in representing the local membership; where the collective bargaining agreement at issue was to be performed; where the votes that were disregarded were taken; where defendant International has chartered Local 670 and where reciprocal rights and duties created by the URW Constitution were to be performed; where defendant International, through its officers or agents, has maintained substantial and consistent contracts; where defendant Armstrong is authorized to conduct and is conducting business; where the individually-named defendants have maintained substantial and consistent contacts in the performance of their duties in the enforcement and administration of the URW Constitution and/or the collective bargaining agreement; and where the principal and foreseeable consequences of defendants' actions or omissions occurred. Thus, each defendant resides, is found, is doing business, has an agent or transacts his or its affairs in the Middle District of Tennessee, or may be summoned thereto in the ends of justice.

PARTIES

4. Plaintiff Local 670 is an unincorporated association and labor organization within the meaning of Section 2(5) of the National Labor Relations Act, 29 U.S.C. § 152(5), having its principal office at 608 Gallatin Road, North, Madison, Tennessee, 37115. As relevant to this action, Local 670 is the exclusive bargaining representative with regard to processing grievances for all incentive and hourly rated production, maintenance, and millroom batch control employees at Armstrong's plant in Nashville, Tennessee. Armstrong is an employer engaged in the manufacture of tires in an industry affecting commerce within the meaning of Sections 2(2), 2(6) and 2(7) of

the National Labor Relations Act, 29 U.S.C. § 15(2),(6) and (7). Local 670, which represents the above-described employees with regard to wages, hours and conditions of employment, brings this action in its own behalf and in behalf of each of the employees it is statutorily and contractually obligated to represent.

5. Defendants are as follows:

5.1 Armstrong, with principal offices at 500 Sargent Drive, P.O. Box 2001, New Haven, Connecticut 06536-0201, is a corporation organized and existing under the laws of Connecticut and operating and authorized to do business in Tennessee. As relevant to this action Armstrong, through its Southeastern Division, is engaged in Nashville, Tennessee, in the business of manufacturing tires.

5.2 R.G. DeAngelo, Jr., who is empolyed in New Haven, Connecticut, is the Director of Labor Relations and Equal Opportunity Programs for Armstrong; signed the collective bargaining agreement in behalf of Armstrong; and upon information and belief, participated actively, along with persons unknown and unnamed, in the combination and conspiracy to deprive Local 670 and its members of protected rights, as appears more fully below.

5.3 Russell Weymouth, the Employee Relations Manager of Armstrong's Southeastern Division in Nashville, Tennessee, signed the collective bargaining agreement in behalf of Armstrong and is sued only in his official capacity.

5.4 International Union, is an unincorporated association and labor organization within the meaning of Section 2(5) of the National Labor Relations Act, 29 U.S.C. § 152(5), having its principal office at 87 South

High Street, Akron, Ohio, 44308. As relevant to this action, the International Union chartered Local 670 pursuant to the provisions of Article VIII of the URW Constitution (a copy of which is annexed hereto and incorporated herein by reference as Exhibit A), binding each to the reciprocal rights and duties set out therein.

Pursuant to Article IV, Section 17 of the Constitution, collective bargaining is conducted by a subdivision of the International Policy Committee ("IPC") which is comprised of elected union representatives of the five Armstrong Rubber Plants.

5.5 Milan Stone is President of the International Union and is directly responsible for the deprivation of the rights of Local 670 and its members, as appears more fully below.

5.6 Bob G. Long, who is International Coordinator for the Armstrong IPC, signed the collective bargaining agreement and participated actively in the combination and conspiracy to deprive Local 670 and its members of protected rights, as appears more fully below.

FACTS APPLICABLE TO ALL CLAIMS

The Collective Bargaining Process

6. Collective bargaining in the rubber industry, which occurs approximately every three years, is conducted on a nationwide basis by the IPC, under the direction of the International. The IPC is subdivided into committees composed of the president of each local of the URW in the company and, depending upon the size of the local union, one or more additional members elected by the

entire membership of the local. Constitution, art. IV, § 17(b). Democratic and majoritarian principles govern the operation of the IPC, including the determination of membership, the resolution of issues before the IPC and the approval of action taken by the IPC.

Article IV, Section 17(e) of the Constitution provides, in part, that

> [i]n situations involving less than the entire committee [e.g., the Armstrong subdivision of the IPC], a majority vote of the members of the Committee from the Local unions directly involved, who also represent a majority of the membership of the local Unions directly affected shall determine the question or problem subject to approval by the International Executive Board.

7. After the subdivision of the IPC reaches a tentative agreement with the company, Article IV, Section 17(o) requires ratification according to similar principles.

> The International Policy Committee shall refer all collective bargaining agreements which they have negotiated back to the Local Unions involved for approval or disapproval. No such agreement shall become effective until it has been approved by a majority of the Local Unions affected who also represent a majority of the membership involved, whereupon it shall be binding on all Local Unions involved.

8. Assuming ratification of the company-wide or master agreement, the locals are then authorized to engage in negotiations at the plant level, leading to local agreements addressing matters of particular local concern which do not amend master language, but supplement it.

Armstrong

Negotiations and the Collective Bargaining Agreement

9. Consistent with the above-described practices and provisions of the URW Constitution, representatives of Armstrong and the Armstrong subdivision of the IPC, who had maintained a collective bargaining relationship for a number of years, entered into negotiations in anticipation of the expiration of the 1982 Agreement. During these negotiations, as relevant to this action, Armstrong proposed a modification of Article XIV, Section 56 of the contract, intended to limit individual supplemental agreements being entered without the same approval as required by the master language, namely approval of the majority of the Armstrong locals representing a majority of the membership of the Armstrong chain.

10. The proposal was accepted, and while not artfully worded, provided, in part, that:

> (a) *This Agreement* [*i.e., master*] *and each location's Supplemental Agreement, including any agreed upon changes, shall become effective at each plant at the time of ratification by the Local Union,* provided this Agreement has been aproved by a majority of the Local Unions representing a majority of the membership and the International Executive Board of the Union. *This Agreement and the local Supplements thereto,* shall continue in effect until 11:00 a.m., July 15, 1988. . . . [Emphasis original].
>
> (b) *This Agreement and the Local Supplements thereto,* may be amended by mutual agreement between the parties. . . . [Emphasis original]. [1985 Agreement, art. XIV, § 56(a) and (b), a copy of which is annexed hereto as Exhibit B].

11. The tentative agreement also continued, with minor exceptions, the grievance procedure contained in Article VI of the 1982 Agreement, which lead to final and binding arbitration. Article VI, Section 8(a) of the 1985 Agreement defines a grievance to include any

> complaint, dispute or controversy in which it is acclaimed [*sic*: claimed] that the Company has failed to comply with an obligation assumed by it under the terms of this Agreement or the supplements thereto, and which involved [*sic*: involves] either (1) a dispute as to the facts involved; (2) a question concerning the *meaning, interpretation, scope or application* of this Agreement or the supplements thereto, [*sic*:;] or (3) both. [Emphasis added.]

12. Moreover, as part of the agreed-upon dispute-resolution mechanism, the parties agreed in Section 8(b) to present all facts relating to the grievance.

> The parties to this Agreement recognize that the grievance should be settled promptly and as close to the source as possible. Further, both parties will endeavor to present all the facts relating to the grievance at the first step in the grievance procedure.

13. The 1985 Agreement, including the local supplements, were ratified as required by the URW Constitution and Article XIV, Section 56(a) of Agreement. The 1985 Agreement, which included the local supplements, was signed on July 14, 1985.

Breach of Contract and Duties

14. Even though no concessions at Hanford were discussed during master negotiations, almost immediately after signing the 1985 Agreement, Armstrong began seek-

ing concessions at local plants around the country. At Armstrong's Hanford, California plant, the Company proposed and extracted upon threat of plant closure substantial changes (including changes in the Basic Wage Rate) in the master Agreement. These changes were contained in a memorandum agreement between the local plant management and the local union dated August 23, 1985 (annexed hereto as Exhibit C). Consistent with the Company's proposal in master negotiations and consistent with the provisions of Article XIV, § 56 of the 1985 Agreement, the Hanford memorandum provided that

> [i]t is expressly understood that this agreement is subject to approval by a majority of Local Unions representing a majority of the membership and the International Executive Board of the Union.

15. The International directed that the Hanford Memorandum be presented to the membership of each of the locals for ratification sometime in September 1985. In late September, a majority of the local unions representing a majority of the membership rejected the proposed amendment.

16. Almost immediately after the Hanford memorandum was rejected, on October 1, 1985, the Hanford local received a six-month notification of plant closure from the company.

17. On October 3, 1985, a second memorandum (annexed hereto as Exhibit D) was entered into at Hanford between local plant management and the local union, again involving substantial changes in the 1985 Agreement. The second Hanford memorandum did not contain the requirement of Section 56 of the 1985 Agreement, providing instead that

> [i]n accordance with longstanding and clearly established practices by the parties and consistent with the Collective Bargaining Agreement, the Company and Union have negotiated the following labor grade rate changes for each specific job classification listed below. . . .

18. Once again the International, through the locals, presented the second memorandum to the membership of the locals for ratification sometime after October 3, 1985 and before October 28, 1985. A majority of the locals representing a majority of the membership rejected the second memorandum. The memorandum was approved by the membership of the Hanford local.

19. By letter of October 23, 1985, the Vice President of the International, at the direction and by the authority of President Stone, unilaterally and without further explanation approved the implementation of the second Hanford memorandum, notwithstanding the provisions of section 56 of the 1985 Agreement and the two earlier votes.

20. Upon information and belief, the substantial modifications in the 1985 Agreement wrought by the Hanford Agreement have had nationwide implications, affecting wages, hours and employment, including shifts in production from one plant to another and massive layoffs, including a loss of employment for 64 members of Local 670. This conclusion is based on the fact that the products produced at Hanford are produced elsewhere, and on the fact that the layoff at Nashville occurred almost immediately after Local 670's intra-union challenge to the Hanford memorandum was denied.

Attempted Exhaustion of Remedies

21. On October 31, 1985, Local 670 and Local 303 in Natchez, Mississippi, filed charges pursuant to Article IV, Section 5 of the URW Constitution against President Stone challenging the decision to implement the second Hanford agreement.

22. Pursuant to advice of General Counsel for the International, the charges were withdrawn and an internal union appeal was filed (annexed hereto as Exhibit E), on November 26, 1986, challenging the decision of President Stone to approve the second Hanford agreement.

23. In an attempt to prepare for the hearing, sometime before November 18, 1985, Mr. Copass, President of Local 670, by letter (annexed hereto as Exhibit F) requested a response to his charges and any documents on which the International intended to rely.

24. By letters dated November 19 and 25, 1985, (annexed hereto as Exhibits G and H, respectively), the International refused to respond, or to provide any documents or information with regard to its decision. At the hearing, described in the Second Count, below, the International did not present its position to Mr. Copass, did not allow Mr. Copass to know what the basis of President Stone's decision had been, and did not allow Mr. Copass to be present during deliberations. The appeal of Mr. Copass was rejected, and by letter of December 10, 1985, Mr. Copass was given a copy of the decision (annexed hereto as Exhibit I). The same day the letter was written, 64 members of the Local 670 were laid off.

25. On or about February 12, 1986, pursuant to Article VI of the 1985 Agreement, Local 670, in behalf of individual members filed a grievance (annexed hereto as

Exhibit J) with the company challenging the implementation of the second Hanford agreement, and the attendant layoffs, alleging violations of Section 18 and 56 of the 1985 Agreement.

26. Pursuant to Article VI, Section 8(b) of the 1985 Agreement, Local 670 submitted with the grievance a request for information (annexed hereto as Exhibit K), surrounding the negotiation, implementation, and effects of the second Hanford agreement.

27. Simultaneously, Local 670 requested information (annexed hereto as Exhibit L) from the International concerning the negotiation and implementation of the second Hanford agreement.

28. By letter dated February 24, 1986 (annexed hereto as Exhibit M), Armstrong refused to docket or process the grievance and *sub silentio* refused to respond to the information requested pursuant to Article IV, Section 8 of the 1985 Agreement. By letter of March 10, 1986, Armstrong expressly refused to provide information (annexed hereto as Exhibit N).

29. By letter dated February 25, 1986, (annexed hereto as Exhibit O), President Stone agreed to provide the information relevant to the grievance to Mr. Copass, President of Local 670, but only through proper channels, namely Mr. Bob Long, the International's Armstrong coordinator.

30. Attempts by Local 670 to have Mr. Long respond to the request, even though his office is located in the same building as President Stone's, had been unsuccessful until March 14, 1985, when Mr. Copass received from Mr. Long a letter dated March 5, 1985, which did not contain or respond to much of the information requested.

31. It appears that Armstrong and the International Union will continue to disregard their obligations under the 1985 Agreement, the URW Constitution and federal labor law; that such flagrant disregard will continue; that such continuing, wrongful action will cause substantial and irreparable injury to Local 670, and its membership, including permanent loss of employment and the attendant economic hardships and mental distress to the members of Local 670 and their families; and that the harm to Local 670 and its members resulting from defendants' unlawful conduct vastly exceeds any harm that would flow to defendants should the requested injunctive relief be granted.

FIRST COUNT

(Section 301, 28 U.S.C. § 185; Action to Compel Processing Grievance)

32. The allegations in paragraph 1 through 31 are realleged and incorporated herein by reference.

33. Armstrong and Local 670 are signatories to the 1985 Agreement, which provides an agreed-upon dispute-resolution mechanism leading to final and binding arbitration.

34. Section 8(a) of the 1985 Agreement defines a grievance as any dispute claiming a violation of the contract and involving "the meaning, interpretation, scope or application" of the contract.

35. Additionally, Section 8(b) imposes an obligation on the company in processing grievances to provide all facts relating to the dispute.

36. Local 670 filed a grievance pursuant to the 1985 Agreement which the Company has refused to docket or process.

37. Local 670 filed a request for information relating to its grievance to which the Company has refused to respond.

38. By reason of the foregoing conduct, Local 670 and its members have been injured, including incurring costs and attorney's fees to enforce the 1985 Agreement.

39. Defendant Armstrong's unlawful acts have continued and threaten to continue unless restrained or enjoined, causing irreparable injuries, as detailed above. Moreover, the nationwide reorganizations wrought by the implementation of the second Hanford memorandum may continue unabated if not remedied quickly, causing irreparable injury that cannot be undone.

WHEREFORE, plaintiff Local 670 demands judgment against defendant Armstrong awarding the following relief:

(a) A preliminary injunction directing Armstrong:

(i) To process the grievance through and including arbitration;

(ii) To process the grievance by providing the information requested and necessary to engaging meaningfully in the dispute-resolution process or, alternatively, to present any objections to the requested information to the arbitrator for his immediate resolution within two weeks of the date of the order;

(iii) To complete processing of the grievance, through and including final and binding arbitration within two months of the date of the order;

(iv) To agree to direct the arbitrator to render an opinion no later than three weeks from the conclusion of the hearing; and

(v) To implement no layoffs, work relocations, or wage changes affecting any members of Local 670 prior to the conclusion of the arbitration process, including final and binding arbitration;

(b) Compensatory damages in an amount as yet undetermined.

(c) Costs of this action, including reasonable attorney's fees; and

(d) Such other relief as is just and equitable under the premises.

SECOND COUNT

(Duty of Fair Representation, 28 U.S.C. § 1337 and 29 U.S.C. § 159(a))

40. The allegations in paragraphs 1 through 39 are realleged and incorporated herein by reference.

41. By virtue of the charter issued by the International Union to Local 670, by virtue of the express terms of the URW Constitution, requiring company-wide negotiations supervised by the International Union, by virtue of the International's status as a signatory to the 1985 Agreement, and by the International's consequent status under 29 U.S.C. § 159(a), in the negotiation process the International owes a duty to Local 670 and its members of complete good faith and honesty of purpose.

42. In entering into the second Hanford memorandum after the company-wide ratification of the 1985 Agreement, including the provisions of Section 56; in entering into the agreement after the rejection of the first Hanford Agreement by a company-wide vote; in entering into the agreement after the rejection of the

first Hanford agreement by a company-wide vote; and in entering into the agreement after the rejection of the second Hanford Agreement by a company-wide vote, in which President Stone and Mr. Long actively lobbied in an attempt to persuade the membership to adopt their position, the International acted arbitrarily, capriciously and in bad faith, siding with a minority group with express knowledge and in disregard of the terms and requirements of Section 56 of the 1985 Agreement and the will of a majority of locals representing a majority of the members of the Armstrong chain.

43. The abrupt change in the position of the International on the issue, without explanation and in knowing disregard of the terms of the 1985 Agreement and the express will of the majority of locals and the majority of the membership, indicates not only bad faith, but outright hostility to Local 670, its members, and the majority of the membership of the Armstrong chain.

44. After losing two majority votes on the issue, President Stone unilaterally implemented his decision. As partial justification for his action, President Stone, Mr. Long and/or persons unknown and unnamed acting in their behalf, actively convinced a President of one of the Armstrong Locals, in his capacity as an IPC member, effectively to overrule the vote of his membership. Article VIII, Section 7(a) of the URW Constitution provides, in pertinent part, that

> [e]xcept as otherwise provided in this Constitution, the decisions and interpretations of the President of the Local Union shall apply unless reversed or modified by the Local Union Executive Board, the membership of the Local Union, or the International Union.

The actions of President Stone, Mr. Long and/or others in wrongfully inducing the local president to disregard the vote of his membership indicates not only bad faith, but outright hostility to Local 670, its membership, and the membership of a majority of the Armstrong chain.

45. When two large Locals appealed President Stone's action, a hearing was held in San Francisco before the International Executive Board. The International refused to provide information prior to the hearing. At the hearing, rather than permitting the presidents of the Locals to rebut or at least confront the position of the International, President Stone only allowed them to present their side of the appeal. No presentation was made by the International while the two were present.

After the two had presented their case, President Stone then appointed a hand-picked subcommittee, which adjourned and met separately to consider the issues. The presidents of the Locals were not allowed or invited to participate in the subcommittee meeting and, upon information and belief, the subcommittee did not fully or fairly consider the issue. That same day, the subcommittee presented its recommendation to the entire International Executive Board, the presidents of the Locals again being excluded from the discussions, deliberations, and decisionmaking process. Only after the appeal had been denied were the Locals informed of the decision or the reasoning of the International. Such conduct was arbitrary, capricious and in bad faith, rendering the internal union procedure little more than a charade.

46. Moreover, the International's conduct after the decision of President Stone to approve the second Hanford memorandum indicates hostility and bad faith toward Local 670 in exercising its rights and the rights of its

members under the 1985 Agreement. Specifically, while Local 670 is the certified representative of the bargaining unit members at Nashville, pursuant to the URW Constitution, company-wide negotiations are conducted by the International. Consequently, the decisions of the Armstrong IPC can be at variance with the express will of the membership of Local 670. While Local 670 has contracted for this arrangement with the International, the International owes a duty of absolute good faith to Local 670 and its membership in cases where the International acts in its collective bargaining capacity unilaterally and adversely to the express will of the Local and its members. This duty includes, even in an adversarial situation, that the International explain and supply to the local all information relating to the International's unilateral action that would have any bearing on or, utility in, a grievance filed against the Company for actions taken that are arguably in violation of the Agreement. While Local 670 has requested such information, both before its internal union appeal and after the appeal, in the context of a grievance, it has been given the "runaround" by the International, has not received significant portions of the requested information, and has not received even minimal cooperation with regard to an internal appeal that affects the employment rights of 64 of its members, and perhaps more. Such action has been in bad faith, in open hostility to Local 670 and its members, and was intended to punish them for exercising their right to question the International, in violation of federal labor law and common-sense standards of decency and fair dealing.

47. By reason of the foregoing conduct and other acts not presently known but ascertainable upon discovery, Local 670 and its members have been injured in their employment and property, including loss of protec-

tions guaranteed by the URW Constitution; loss of vested rights under the 1985 Agreement; loss of employment and employment opportunities with the attendant mental distress; and incurring the costs of this action, including attorney's fees.

48. Defendant International's refusal to provide information continues and threatens to continue unless restrained or enjoined and has caused substantial and irreparable harm to the ability of Local 670 to meet its contractual and statutory duties and the ability of the members of Local 670 to exercise their rights, as set out in detail above.

WHEREFORE, plaintiff Local 670, in its own behalf and in behalf of its members, demands judgment against the International awarding the following relief:

(a) A declaration that each of the acts about which plaintiffs complain and the course of conduct evidenced by such, violated the International's duty of fair representation;

(b) A preliminary injunction directing the International to provide all information requested by Local 670 within ten days from the entry of an order;

(c) A preliminary injunction to compel the International and President Stone and Mr. Long, in their official capacities, to cooperate fully in the provision of information and assistance, including testimony, in the grievance and arbitration process;

(d) Compensatory and consequential damages in the amount of Two Million Dollars;

(e) Costs of this action, including reasonable attorney's fees; and

(f) Such other relief as is just and equitable under the premises.

THIRD COUNT

(Conspiracy To Violate Duty of Fair Representation, 28 U.S.C. § 1337 and 29 U.S.C. § 159(a))

49. The allegations in paragraphs 1 through 48 are realleged and incorporated herein by reference.

50. Armstrong, through its officers or agents, Mr. DeAngelo, Mr. Gary W. Beshear, Mr. Bryant Reed, Mr. Weymouth and persons unknown and unnamed did knowingly combine, confederate and agree together, and with each other and with officers and agents of the International previously named, to induce the International to violate its duty of fair representation and did support, encourage or participate in, directly or indirectly, each wrongful act described in the Second Count.

51. In furtherance of the above, Armstrong, through its officers or agents:

(a) Upon information and belief, mislead the International during master negotiations by not discussing the Hanford situation, which was not only reasonably foreseeable, but known by the Company to require concessions;

(b) Induced the International to disregard the company-wide vote on the first Hanford agreement, knowing full well the requirements of the URW Constitution and Section 56 of the Agreement;

(c) Induced the International to disregard the company-wide vote on the second Hanford Agreement, knowing full well the requirements of the URW Constitution and Section 56 of the Agreement;

(d) Accepted the unilateral decision of President Stone, notwithstanding full and complete knowledge as to the position of a majority of the local unions representing a majority of the members of the Armstrong chain;

(e) Upon information and belief, held discussions with the International Union both before and after the grievance was filed to formulate a plan to frustrate Local 670 and its members from exercising their statutory and contractual rights;

(f) Implemented the plan described above, which included the refusal to process or even consider a grievance that was clearly arbitrable under the terms of the 1985 Agreement;

(g) Upon information and belief, misrepresented to the International Union that the Hanford Agreement would not have any effect on the other Locals when, in fact, it did;

(h) Conspired to violate the rights of the members of Local 670 to an equal vote and to good-faith representation guaranteed by 29 U.S.C. § 411 and 501; and

(i) Commited other acts presently unknown, but ascertainable through discovery.

52. The purpose and objective of Armstrong in entering into the above-described combination or conspiracy, was to undermine the integrity and utility of company-wide negotiations; to deprive Local 670 and its members of contractual, constitutional, and federally guaranteed rights; and to create, promote and foster internal union conflict.

53. By reason of the foregoing conduct, Local 670 and its members have been injured in their employment and property, including loss of protections guaranteed by the URW Constitution; loss of a good working relationship with the International; loss of vested rights under the 1985 Agreement; loss of employment and employment opportunities, with the attendant mental distress; and incurring the costs of this action, including attorney's fees.

WHEREFORE, plaintiff Local 670, in its own behalf and in behalf of its members, demands judgment against Armstrong, and Mr. DeAngelo awarding the following relief:

(a) Compensatory and consequential damages in the amount of Three Million Dollars;

(b) Costs of this action, including reasonable attorney's fees; and

(c) Such other relief as is just and equitable under the premises.

FOURTH COUNT

(Sections 101 and 102 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §§ 411 and 412—Denial of Equal Rights)

54. The allegations in paragraphs 1 through 53 are realleged and incorporated herein by reference.

55. The International, President Stone and Mr. Long, by their actions in encouraging and implementing a decision to adopt the second Hanford memorandum, with knowledge of the meaning of Section 56 of the Master Agreement, the company-wide ratification vote adopting the 1985 Agreement, the company-wide vote rejecting the

first Hanford memorandum, and the company-wide vote rejecting the second Hanford memorandum did deprive, willfully and maliciously, the members of Local 670 of a meaningful opportunity to vote and participate in the affairs of the International, discounting the weight of their votes, and treating them unequally and inequitably, in an arbitrary and despotic manner.

56. By reason of the foregoing conduct, the members of Local 670 have been injured in their employment and property, including the loss of vested rights under the 1985 Agreement; the loss of employment and employment opportunity, with the attendant mental distress; and incurring the costs of this action, including attorney's fees.

WHEREFORE, plaintiff Local 670, in behalf of its individual members, demands judgment against the International, President Stone and Mr. Long, jointly and severally, awarding the following relief:

(a) Compensatory and consequential damages in the amount of Two Million Dollars;

(b) Punitive damages in the amount of $200,000;

(c) Costs of this action, including reasonable attorney's fees; and

(d) Such other relief as is just and equitable under the premises.

FIFTH COUNT

(Breach of Fiduciary Duty - 29 U.S.C. § 501)

57. The allegations in paragraphs 1 through 56 are realleged and incorporated herein by reference.

58. In consideration for being chartered by the International, Local 670 and its members agree to be bound

by the URW Constitution, which imposes reciprocal duties and obligations on the International, its locals and the membership.

59. While Local 670 is the certified bargaining agent for the bargaining unit employees in Nashville, by agreeing to be bound by the URW Constitution, Local 670 and its members authorize the International to engage in company-wide negotiations in their behalf, allowing the International to take into account not just the interests of Local 670, but the interests of other locals and their members in the Armstrong chain.

60. The grant to the International of power to conduct company-wide negotiations in behalf of Local 670, in addition to being subject to legal and contractual duties, gives rise to fiduciary duty involving one of trust, good faith and fair dealing.

61. Specifically, the fiduciary duty imposed upon the International by the above grant of power requires, at minimum, that when the International does act in behalf of the Armstrong chain, it cannot refuse to allow the Local and its members access to information concerning the basis of the International's decisions or actions, either in internal union proceedings or in the administration and enforcement of the 1985 Agreement.

62. Moreover, when an action or decision of the International precipitates action by the Company that gives rise to a grievance under the 1985 Agreement, the International, by virtue of its fiduciary obligations, cannot deny access to information to the Local or its members necessary to process the grievance.

63. Donald Copass, President of Local 670, in behalf of the members of the Local, demanded that the Inter-

national reconsider its action agreeing to the second Hanford memorandum. The appeal was denied, the International's opinion stating that the remedy, if any, was pursuant to the grievance and arbitration provisions of the 1985 Agreement.

64. A grievance was filed in behalf of 64 members of Local 670 laid off immediately after implementation of the second Hanford memorandum. To facilitate evaluating and processing the grievance, and to enable the grievants to comply with the obligation under Article VI, Section (8)(b) to provide all information to the Company, Local 670 sent a written request for information to President Stone.

65. President Stone, who had made the decision to implement the second Hanford memorandum refused to supply the information, except through proper channels. Mr. Long, who is in the same building as President Stone, would not discuss the request, asking the Local to send him another copy. Mr. Long was contacted again, but claimed he had not received the copy, and again refused to discuss the specific items requested. A third letter was sent to Mr. Long, and there was no response until March 14, 1986. The response did not produce or address many of the requested items.

66. Given the action of the International in denying information before the internal appeal, and its subsequent course of dealing with Local 670, a demand that the International take action against President Stone and Mr. Long has been made, and further demands relating to the requested information or that the International take action against them would be futile and of no purpose.

67. The information requested is critical to the meaningful exercise by the members of Local 670 of their

rights under the grievance provisions of the 1985 Agreement. It appears that President Stone and Mr. Long will continue to disregard their fiduciary responsibilities or refuse to satisfy them fully, causing irreparable injury to the members of Local 670. The harm to the members of Local 670 if relief is not granted vastly exceeds any harm to defendants that will result if relief is granted.

WHEREFORE, Local 670, in behalf its individual members and for their benefit and the benefit of the Local, demands judgment against President Stone and Mr. Long awarding the following relief:

(a) A declaration that the acts of defendants in refusing to provide all requested information is violative of 29 U.S.C. § 501;

(b) A preliminary injunction directing President Stone and/or Mr. Long to provide all information requested and to cooperate fully in assisting the members of Local 670 in processing their grievance;

(c) The costs of this action, including reasonable attorney's fees; and

(d) Such other relief as is just and equitable under the premises.

Plaintiffs demand a jury trial on all matters so triable.

VERIFICATION

I, Donald P. Copass, President of Local 670 and a member of the URW, swear and affirm that I have reviewed the foregoing complaint and that the information contained therein is true and accurate, except as to averments made on information and belief, which I reasonably believe to be correct.

/s/ Donald P. Copass
Donald P. Copass

State of Tennessee)
) SS
County of Davidson)

Sworn to and subscribed before me on this 17th day of March, 1986.

/s/ Nancy (Illegible)
Notary Public

My commission expires (Illegible).

Respectfully submitted,

Passino & DeLaney

By: /s/ Michael J. Passino
Michael J. Passino
303 Church St., First Fl.
Nashville, TN 37201
(615) 244-3531

By: /s/ Jane P. North
Jane P. North
303 Church St., First Fl.
Nashville, TN 37201
(615) 244-3531

(Filed August 13, 1987)

No. 86-5774/5877

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LOCAL 670, UNITED RUBBER, ETC.,
Plaintiff-Appellant, Cross-Appellee,

v.

INTERNATIONAL UNION, ETC., ET AL.,
Defendants-Appellees,

v.

ARMSTRONG RUBBER COMPANY, ET AL.,
Defendants-Appellees, Cross-Appellants

ORDER

BEFORE: ENGEL and GUY, Circuit Judges and PECK, Senior Circuit Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

Entered by Order of the Court
/s/ John P. Hehman
John P. Hehman, Clerk

United Rubber, Cork, Linoleum
and Plastic Workers of America
AFL-CIO, CLC

This Constitution shall be in force and effect on and offer November 1, 1984

1984 CONSTITUTION
URW

Amended at Hollywood, Florida October 8, 1964
(Pages 26 Through 29)

* * *

SECTION 17—International Policy Committee:

(a) For the purpose of handling problems which affect wages, contract negotiations, or collective bargaining on a wider scale than on a plant basis, there is hereby created a committee which shall be known as the International Policy Committee.

(b) Each Local Union shall select a member or members of the International Policy Committee. The number of members to which a Local Union is entitled shall be determined upon the following basis:

Membership up to 1000 members—1
1001 to 2500 members—2
2501 to 4000 members—3
4001 to 6000 members—4
6001 to 8000 members—5
8001 to 10000 members—6
Above 10000 members—7

In determining the average membership of a Local Union for the purpose of calculating the number of members of the International Policy Committee to which a

Local Union is entitled, the following procedure shall be used: The number of per capita tax receipts from the first month's dues of new members, the first month's dues of rejoining members, and the regular monthly dues plus strike or lockout exemptions of members of a Local Union for the preceding twelve (12) months' period ending March 31 in the year in which elections of Local Union officers are conducted, divided by twelve (12), and such calculation and determination shall continue in effect until the succeeding year in which Local Union elections are conducted.

(c) The President of each Local Union shall by virtue of his office be a member of the International Policy Committee representing his Local Union. Where a Local Union is entitled to more than one member on the Committee. Committee members other than the Local Union President shall be selected by the Local Union by an election conducted at the same time and in accordance with Article VIII, Section 5, of this Constitution.

The Vice President of the Local Union shall serve as a member of the Committee only as an alternate in the absence of the Local Union President. Alternate members for other members of the Committee shall be selected at the election at which members of the Committee are selected. Candidates for Local Union offices may be candidates for the position of members of the International Policy Committee.

The term of office of members of the Committee will run concurrently with the terms of office of Local Union officers.

(d) The International Policy Committee or the members thereof representing the particular Local Unions di-

rectly involved in a problem shall work under the direction of and in cooperation with the International Executive Board.

The International Policy Committee or the members thereof representing the particular Local Unions directly involved in a problem shall be called into conference by the International President whenever the need arises.

(e) A majority of the members of the International Policy Committee who also represent a majority of the membership of the Local Unions shall determine the question or problem to be decided subject to approval by the International Executive Board. In situations involving less than the entire Committee, a majority vote of the members of the Committee from the Local Unions directly involved, who also represent a majority of the membership of the Local Unions directly affected shall determine the question or problem subject to approval by the International Executive Board.

(f) Where Local Unions have three (3) or more members on the Committee, a majority vote of said members shall represent the position of that Local Union on any question. In the event a Local Union is represented by an even number of members on the Committee or an even number of members on the Committee participate in a vote, and the vote is evenly divided, then and in that event, the position of the Local Union on any question shall be determined by the vote of the Local Union President or his alternate.

(g) The International Executive Board shall formulate such programs, rules and regulations as may be necessary to conduct the affairs of the International Policy Committee or any part thereof.

(h) The International President or his designated representative is empowered:

1—To coordinate the activities of Local Unions directly involved in a problem;

2—To direct said Local Unions in the giving of required notices;

3—To direct said Local Unions in the taking of appropriate action; and

4—To take whatever steps are necessary to obtain immediate compliance with his directions by said Local Unions.

(i) The International Executive Board shall decide in each instance whether members of the Committee will be compensated for travel, time and expenses to attend conferences, negotiations or meetings and Local Unions will be advised before sending members whether compensation will be paid for such meeting.

(j) Policy Committee members who are to be compensated for either travel or time lost or expenses by the International Union shall be compensated on the following basis:

1—For expenses incurred for travel, meals or hotel, the compensation shall be limited to the actual expenses incurred but in no event shall be in excess of similar allowances for Field Representatives.

2—Compensation for time lost will be limited to actual loss in wages but the amount shall not exceed the salary of Field Representatives.

(k) When a Policy Committee member has been compensated in accordance with Paragraphs (i) and (j)

above, the Treasurer of the member's Local Union shall be furnished with a transcript of the amount of money paid to him by the Secretary-Treasurer of the International Union.

(l) The International President shall have the authority to assign the Skilled Trades Director or a member of the International Skilled Trades Coordinating Committee to assist and advise any section of the International Union Policy Committee on those matters relative to skilled trades during master negotiations when he deems it necessary.

(m) An agreement reached on wages for skilled trades that is adopted by the Advisory Committee of the International Policy Committee as a pattern shall be binding on all the chains that comprise the Advisory Committee.

(n) The International President shall have the authority to assign the President of the Council of Retirement Clubs or a URW retiree to address meeting(s) of the overall URW International Policy Committee for the purpose of setting forth the concerns and needs of URW retirees.

(o) The International Policy Committee shall refer all collective bargaining agreements which they have negotiated back to the Local Unions involved for approval or disapproval. No such agreement shall become effective until it has been approved by a majority of the Local Unions affected who also represent a majority of the membership involved, whereupon it shall be binding on all Local Unions involved.

Within ten (10) days after conclusion of negotiations, the President of each Local Union involved shall call

a special meeting of the Local Union for the purpose of ratification. Within two (2) days after such meeting, the Local Union President shall report the action of the Local Union to the International President on forms provided by the International Union.

* * *

ARMSTRONG RUBBER COMPANY
P. O. Box 129 — Pacific Coast Division
Hanford, California 93232

August 23, 1985

MEMORANDUM OF AGREEMENT

The Company and Union have entered into the following agreement in a joint effort to reduce cost and maintain plant operations at the Pacific Coast Division:

1. There will be an across-the-board hourly wage reduction in the amount of $2.40 per hour effective Monday, September 30, 1985.
2. No cost-of-living allowance increases will be granted during the period September 2, 1985, through August 31, 1986.
3. The general wage increase of $.10 per hour scheduled for July 14, 1986, will not be granted.
4. Cost-of-living allowance increases scheduled during the period September 1, 1986, through July 15, 1988, will be granted in accordance with Memorandum 18 of the Collective Bargaining Agreement.
5. The general wage increase of $.08 per hour scheduled for July 13, 1987, will be granted.
6. Should the Company close the Pacific Coast Division during the term of the 1985 Collective Bargaining Agreement, it is agreed that plant closure benefits under the terms of the 1985 Agreement on Supplemental Unemployment Benefits and Employee Benefits Agreement will be paid based upon earnings without any of the wage reductions referenced in items #1, #2, and #3 of this agreement.

This agreement is entered into by the parties Friday, August 23, 1985, and is subject to approval of Local Union No. 703 of the United Rubber, Cork, Linoleum and Plastics Workers of America. Additionally, it is understood that this agreement is subject to approval by a majority of the Local Unions representing a majority of the membership and the International Executive Board of the Union.

The Armstrong
Rubber Company

/s/ H. D. Hoppert
H. D. Hoppert, Manager
Employee Relations

/s/ E. M. Avila
E. M. Avila Assistant
Manager
Employee Relations

United Rubber Workers,
Local #703

/s/ O. F. Davis
O. F. Davis, President

United Rubber Workers,
Local #703

/s/ Manuel Gonzales
Manuel Gonzales, Vice
President

United Rubber Workers,
Local #703

/s/ Alan L. Marin
Alan Marin, Negotiating
Committee

/s/ Bill Alford
Bill Alford, Negotiating
Committee

/s/ Lewis Milton
Lewis Milton, Chief Steward

/s/ Joe Vargas
Joe Vargas, Time Study
Engineer

ARMSTRONG RUBBER COMPANY
P. O. Box 129 — Pacific Coast Division
Hanford, California 93232

October 3, 1985

MEMORANDUM OF AGREEMENT

I. The following Daywork and AIE rates have been established by the parties and shall become a part of the local wage agreement consistent with the established practices by the parties and the provisions of the Collective Bargaining Agreement.

Labor Grade	Maint. Daywork	Production Daywork	*AIE Job Rates	Incentive Rates Table: Guaranteed Rate	Incentive Rates Table: Downtime 85% AIE	Incentive Rates Table: Incentive Base Rate	Incentive Rates Table: AIE
A	10.158	9.010	9.408	6.727	7.997	7.056	9.408
B	10.221	9.069	9.482	6.770	8.060	7.112	9.482
C	10.284	9.128	9.557	6.824	8.123	7.168	9.557
D	10.347	9.187	9.632	6.868	8.187	7.224	9.632
E	10.410	9.245	9.706	6.911	8.250	7.279	9.706
F	10.473	9.304	9.781	6.954	8.314	7.336	9.781
G	10.536	9.363	9.856	7.008	8.378	7.392	9.656
H	10.599	9.422	9.930	7.050	8.440	7.447	9.930
I	10.662	9.481	10.005	7.094	8.504	7.504	10.005
J	10.725	9.539	10.080	7.147	8.568	7.560	10.080
K	10.788	9.598	10.154	7.189	8.631	7.615	10.154
L	10.851	9.657	10.229	7.242	8.695	7.672	10.229
M	10.914	9.716	10.303	7.284	8.758	7.727	10.303
N	10.977	9.775	10.378	7.327	8.821	7.783	10.378

II. In accordance with long standing and clearly established practices by the parties and consistent with the Collective Bargaining Agreement the Company and Union have negotiated the following labor grade rate changes for each specific job classification listed below:

Job Code	Job Title	Labor Grade Rate
1107	Stock Utility	E
1108	Refine Mill Operator	I
1131	Banbury Operator	H
1133	Millman - Miscellaneous Batchoff	F
1141	Intermix Operator - Master Batch	H
1192	Mixer Tender	E
1194	Mixer Servicer	D
1197	Materials Trucker	G
1198	Compound Servicer	F
1221	Extruder Operator - 10″/10″	J
1224	Tread Tray Loader/Slitter - 10″/10″	E
1228	Millman (Tread Extruding) 10″/10″ Extruder	F
1229	Millman - 10″/10″ Line	G
1241	Extruder Operator (Strip Extruding)	H
1244	Millman (Strip Extruding)	F
1245	Windup Tender (Strip Extruding)	D
1294	Tread Handler/Trucker	G
1402	Utility And Fill-In	F
1406	Liner Servicer	F
1441	Fabric Treating System Operator	H
1443	Millman - Direct Feed	G
1445	Letoff - Windup Tender - 4-Roll	F
1446	Windup Tender - 4-Roll	G

Job Code	Job Title	Labor Grade Rate
1451	Calender Operator - (Twin Two-Roll Calen.)	H
1453	Millman (Twin Two-Roll Calender)	G
1455	Windup Tender (Twin Two-Roll Calender)	E
1497	Stockman - Calendering	H
2011	Bead Former Operator	H
2132	Bias/Shear Operator Servicer	F
2191	Slitter Operator - Cameron	E
2195	Belt Edge Operator	C
2196	Fabric Utility	E
2231	Tire Assembler (Classic Radial)	H
2241	Tredloc Operator	F
2304	Carcass Servicer/Controller	F
2306	Green Tire Awler	B
2308	Green Tire Repairman	C
2331	Tire Assembler (Passenger & Commercial)	H
2399	Component Expediter	F
2609	Press/Hold Servicer	J
2615	Press Tender - Passenger and Commercial	G
2632	Green Tire Spray & Store	G
2650	Utility - Curing	G
2803	Final Finish Servicer	C
2850	Blem & Scrap Tire Processor	H
2851	Tire Trimmer/WSW Pre-Sorter	D
2870	Optimizer/Buffer Operator	F
2880	Utility and Fill In	D
2896	Tire Labeler & Trucker	F

Job Code	Job Title	Labor Grade Rate
3392	Tire Brander	D
4001	Mixer Operator	H
4101	Equipment Tender, Power House	L
5001	Machinist	L
5101	Instrument Man	N
5301	Utility Man (Plant Repair)	L
5501	Maintenance Man	N
5701	Electrician	N
5801	Die Maker	K
6408	Serviceman, Fire and Safety	E
6801	Laboratory Technician	H
6806	Technical Service Utilityman	L
8108	Defect Repairman	I
8208	Scrapman	G
8304	Bulk Receiver and Rubber Cutter	F
8307	Warehouseman - Receiving	G
8501	Material Handler - Inventory	E
8507	Warehouseman	G
8601	Batch Control Technician	J
8602	S.Q.C. Technician - Material Prep. Div.	H
8604	Utility Technician	L
8605	Hardware Technician	G
8606	Inspector	G
8607	Classifier	I
8608	S.Q.C. Technician - Tire Assembly Division	H
8609	S.Q.C. Technician - Curing & F.F. Division	I

III. It is understood that newly created jobs and changed jobs will be established in accordance with the provisions of Section 19 of the Collective Bargaining Agreement. The rate for such new or changed jobs will be established by the Company in a manner consistent with the negotiated changes in this Agreement.

VI. Should the Company close the Pacific Coast Division during the terms of the 1985 Collective Bargaining Agreement, any earnings loss caused by the labor grade rate changes contained in this agreement will be returned in full to affected employees. Additionally, in the event of plant closure during the term of the 1985 Collective Bargaining Agreement, plant closure benefits under the terms of the 1985 Agreement on Supplemental Unemployment Benefits and Employee Benefit Agreement will be based upon earnings without any loss caused by the labor grade rate changes contained in this agreement.

V. Supplemental Section S-72 amended to read, "To facilitate training employees, they may be assigned to any shift for a period not to exceed thirty (30) calendar days, unless extended by mutual agreement by the Company and the Union. Such temporary assignment will not be cause to displace an employee from his regular shift."

VI. Supplemental Section S-63 amended to read, "When an employee is the successful bidder on a job, he must accept the job and remain on the job for a period of six (6) months unless disqualified under S-57 or S-58."

VII. Supplemental Section S-52 amended to read, "A "notice of job vacancy" shall be posted for a period of twenty-four (24) hours. Employees with not less than six (6) months seniority that are not on layoff may file a written bid for the job vacancy at any time within the time period specified above."

(a) The following departments will be considered as divisions with the Seniority Unit:

Material Preparation - Departments 11, 12, 14, 40, and 83.

Tire Assembly - Departments 20, 21, 22, 23, and 82.

Branding-Wrapping, Warehouse and Shipping - Departments 33 and 85.

Curing - Department 26.

Final Finish - Departments 28 and 81.

Plant Protection - Department 64.

Technical-Quality Control - Departments 68 and 68.

Maintenance - Departments 50, Machine Shop; 51, Instrument Shop; 53, Plant & Carpentry Shop; 55, Maintenance Man; 55(a) Mold Maintenance, 55(b), Oilers; 57, Electrical Repair; 58, Die Makers.

VIII. It is agreed that the bidding chain will be limited to the original job vacancy plus two additional bids unless extended by mutual agreement.

IX. Supplemental Section S-81 amended to read, "The Company will post a notice for fourty-eight (48) hours in the resident division where the original reduction of force occurs, during which time employees in the classification where the reduction of force occurs may elect in writing at the Employee Relations Office, their desire for the optional layoff.

(a) Senior service employees, that have signed for optional layoff in accordance with S-81, in a classification where a reduction in force occurs which will ultimately result in a layoff from the seniority unit will be laid off first.

(b) Junior service employees in the original classification affected by reduction in work force, transfer, or disqualification proceedings that did not sign for optional layoff may elect an optional layoff prior to displacing to another classification if, by their placement, junior service employees would be laid off from the seniority unit.

X. This agreement is entered into by the parties this date, Thursday, October 3, 1985 and is subject to approval of Local Union No. 703 of the United Rubber Cork, Linoleum and Plastic Workers of America and Armstrong Corporate Officials. Following such approval, the terms of this agreement shall become effective on October 14, 1985.

The Armstrong
Rubber Company

.....

H. D. Hoppert, Manager
Employee Relations

.....

E. M. Avila, Assistant
Manager
Employee Relations

United Rubber Workers,
Local #703

.....

O. F. Davis, President
United Rubber Workers,
Local #703

.....

Manuel Gonzales, Vice
President

.....

Alan L. Marin
Grievance Negotiating
Committee

.....

William C. Alford
Grievance Negotiating
Committee

.....

Sonny Milton, Chief
Steward

.....

Joe Vargas, Time Study
Engineer

URW

United Rubber, Cork, Linoleum &
Plastic Workers of America,
AFL-CIO, CLC International Union

87 South High St.
Akron, Ohio 44308
216/376-6181

Milan O. Stone, *President*
Joseph H. Johnston, *Vice President*
Donald C. Tucker, *Secretary-Treasurer*

December 10, 1985

Donald P. Copass, President
URW Local Union No. 670
608 Gallatin Road North
Madison, Tennessee 37115

M. M. Hedglin, President
URW Local Union No. 303
410 Gayosa Avenue
Natchez, Mississippi 39120

Dear Brothers:

On Friday, December 6, 1985, in a special meeting, the International Executive Board gave serious consideration to your appeal of a decision of the International President.

The decision of the International Executive Board with respect to your appeal is as follows:

> The International Executive Board has reviewed all of the documents and evidence which were submitted in the appeal of Brothers Copass and Hedglin from a decision of the International President. Based upon its review and consideration the International Executive Board has determined that International President Stone's decision was the proper one. The appeal is denied.

For your information, enclosed is a copy of the entire report considered and adopted by the Board.

With best wishes, I am

Fraternally yours,

/s/ Donald C. Tucker
Donald C. Tucker
International Secretary-Treasurer

DCT:lw
opeiu 339
enclosure

C/ President Stone
Vice President Johnston
General Counsel Armstrong

The following members of the International Executive Board have been appointed by International President Stone to the Appeals Committee to consider the appeal of Donald Copass, President of URW Local Union No. 670, and M. M. Hedglin, President of URW Local Union No. 303, from a decision of the International President:

H. Gene Hunsaker	Chairman
Richard Kimbel	Secretary
Annalee Benedict	

After reviewing all of the facts relevant to this appeal, the Appeals Committee makes the following recommendations:

FINDINGS OF FACT

1. On July 14, 1985, the Armstrong Rubber Company and URW Local Unions Nos. 93, 164, 303, 670 and 703 entered into and signed a new master agreement and new local supplementary agreements which by their terms were to remain in effect until July 15, 1988. A copy of the relevant portions of the Master Agreement and Local No. 703's supplemental agreement are attached and marked Exhibit A.

2. On August 23, 1985, Local 703 and the Armstrong Rubber Company entered into a memorandum of agreement. That memorandum contained among other things, a freeze on COLA and an agreement to forego future wage increases. The memorandum was by its own terms, subject to approval by a majority of the Local Unions representing a majority of the membership and the International Executive Board. This agreement never was ratified by the required number of Local Unions. A copy of this memorandum is attached and marked Exhibit B.

3. On or about October 1, 1985, Local 703 received a six-month notification of the plant's closure.

4. On October 3, 1985, the Armstrong Rubber Company and URW Local 703 entered into a second memorandum of agreement, a copy of which is attached and marked Exhibit C. That memorandum, among other things, amended provisions of the local wage agreement by reducing daywork and AIE rates. This memorandum, by its terms (see paragraph X), was subject to approval of Local No. 703 and Armstrong corporate officials.

5. Despite the fact that the literal terms of the memorandum (see Exhibit C, paragraph X) did not require ratification by a majority of the Local Unions representing a majority of the membership, the memorandum was in fact presented to each of the five master Locals for their approval.

6. Exhibit C was not ratified by a majority of the Locals representing a majority of the membership. It was, however, approved by the membership of Local 703.

7. By letter dated October 28, 1985, International Vice President Johnston approved the October 3, 1985 memorandum. In doing so he was carrying out the duties assigned him by the International President. As a result the approval is a decision of the International President within the meaning of Article IV, Section 3, paragraph (d) of the Constitution and is properly appealable thereunder.

8. By letter dated October 31, 1985, Donald Copass, President of Local 670 and M. M. Hedglin, President of Local 303, filed charges against President Stone

pursuant to Article IX, Section 5 of the URW Constitution.

9. By telegram dated November 26, 1985, Brothers Copass and Hedglin appealed International President Stone's decision to approve the October 3, 1985 memorandum to the International Executive Board.

10. By telegram, dated November 27, 1985, the charging parties withdrew the above referenced charges.

DISCUSSION

The central question raised by this appeal is whether or not the October 3, 1985 memorandum of agreement can be approved by the International President despite the fact it has not been approved by "a majority of the Local Unions representing a majority of the membership." While those of us involved in master contract negotiations are intimately familiar with this phrase, those who come from independent Local Unions may not be. Accordingly, we feel constrained to point out that it is a reference to Article IV, Section 17, Paragraph (e) of the URW Constitution which provides:

> "A majority of the members of the International Policy Committee who also represent a majority of the membership of the Local Unions shall determine the question or problem to be decided subject to approval by the International Executive Board. In situations involving less than the entire Committee, a majority vote of the members of the Committee from the Local Unions directly involved, who also represent a majority of the membership of the Local Unions directly affected shall determine the question or problem subject to approval by the International Executive Board."

The significance of this provision cannot be over-emphasized. If the October 3, 1985 memorandum falls within the above quoted provision, the appeal must be sustained. If, on the other hand, the above provision does not apply, International President Stone's decision is unquestionably the proper one. We are therefore charged with the duty to determine whether the memorandum in question deals with "master language" which cannot be altered without the consent of the chain, or whether it deals with supplemental language and can thus be amended by mutual agreement between Local 703 and the company.

In making this determination we should be guided by the parties' intent, the applicable contract language, and the relevant bargaining history. Our reliance on these items should enable us to determine whether the local wage agreement is properly viewed as a part of the master contract or the local supplement thereto.

Our reason for examining these items lies in the fact that Article IV, Section 17, Paragraph (e) of the Constitution does not require that any particular provision be negotiated on a master basis. Rather, it establishes procedures to utilize in those situations where the parties have bargained or are bargaining on an issue on a master basis and thus members from more than one Local Union can be directly affected by the decision. In other words, Paragraph (e) does not set out items such as wages, seniority or pensions which must be the subject of master bargaining. It does, however, set out procedures to be followed if, and only if, the parties deal with one or more of these items on a master basis. The issue then is essentially a factual one. Either the facts establish that the Local Union wage agreement was negotiated

on a master basis and affects members from more than one Local Union, or they do not.

The starting point for such an inquiry is Article VIII, Section 18(a) of the master agreement which provides in part:

> "As an addendum to this agreement, there shall be established *at each local plant* a local wage agreement . . ." (emphasis added)

A reading of this provision clearly establishes that the master agreement mandates that the local wage agreement be established at the local plant involved. This fact becomes more significant when one reviews the terms of Article II, Section 2(c) of the agreement. It provides:

> "Any provisions negotiated during the local plant level negotiations shall become a part of the local supplemental agreement, supplementary to the Uniform agreement."

From reading these two provisions of the Uniform Agreement, it is apparent the local wage agreement was negotiated as, and remains a part of, the supplemental agreement.

As mentioned earlier, it is also appropriate to look to the intent of the parties to determine the nature of disputed language. In this instance, the evidence establishes that prior to rendering his opinion, International President Stone contacted each of the Local Union Presidents involved in master bargaining. Three of the five, i.e., *Seymour, Allen* and *Davis* informed him that in their opinion the local wage agreement was a part of the supplemental agreement and could be amended by mutual

agreement on a local basis. A fourth, Donald Copass, informed International President Stone that the local wage agreement is a part of the supplementary agreement and in the past could have been amended on a local basis. He contended, however, that a recent change in the termination clause of the contract (specifically paragraph 56) now prohibits such action. In short, the available evidence indicates that an overwhelming majority of the local Presidents involved regard the local wage agreement as a part of the supplementary agreement. Appellant Copass thus concedes that the language was properly viewed as a part of the supplement, but now contends that the termination language of paragraph 56 prohibits its renegotiation. This portion of his argument will be dealt with later, but for now, suffice it to say that the supplemental nature of the disputed language is supported by the available evidence of the parties' intent.

Finally, as mentioned earlier, it is also appropriate to examine the bargaining history of this language. When that is done it is apparent that in the past all or nearly all of the Armstrong Locals have made amendments to the local wage agreement on a supplemental basis. Admittedly, those amendments have generally reflected increases. Nonetheless, the history clearly demonstrates that the local wage agreement is a proper subject for bargaining. In fact, the evidence demonstrates in the past that Local 670 has been a party to "concessions" not unlike those it now challenges. At any rate we are convinced the *literal terms* of the *contract*, the available evidence of *intent*, and the *bargaining history* all support International President Stone's conclusion that the local wage agreement is, and always was, a part of the supplemental agreement.

Having determined that the local wage agreement is properly considered a part of the supplemental agreement, we have no alternative but to conclude that it does not fall within the coverage of *Article IV, Section 17*, Paragraph (e) of the URW Constitution. Such a conclusion eliminates any argument that the Constitution prohibits this action. In other words, appellants are asserting not that the memo in question deals with master language, but rather that it fails to comply with the termination and amendment provision of the master agreement.

We have several problems with such an argument. First, as noted earlier, three of the Local Unions involved, as well as the company, are in agreement that Paragraph 56 does not preclude mid-contract modification of supplemental agreements. We have a time honored principle of Local Union autonomy which holds that in such situations we will not substitute our judgment for that of the affected Local Unions unless the law or the URW Constitution requires such a result. Since we have already concluded this is not the case, we see no reason to substitute our judgment for that of the Locals.

Secondly, the language relied on by Copass (Paragraph 56B) specifically permits amendments by mutual agreement of the parties. We believe that once it is decided that the local wage agreement is a part of the supplement, it is a simple matter to determine that only the company and Local 703 are a party to that supplement. Accordingly, their mutual agreement as reflected in the October 3, 1985 memorandum is sufficient to amend it.

Third, Brothers Copass' and Hedglin's argument as to the proper interpretation of Paragraph 56 is obviously one of contract and not Constitutional interpretation. If

they are in dispute with the company as to the meaning of this clause of their contract, the proper remedy is to pursue the matter through the grievance procedure and not to seek to have this Board impose its interpretation.

CONCLUSION

Based upon the aforementioned reasoning the Appeals Committee makes the following recommendation:

The International Executive Board has reviewed all of the documents and evidence which were submitted in the appeal of Brothers Copass and Hedglin from a decision of the International President. Based upon its review and consideration the International Executive Board has determined that International President Stone's decision was the proper one. The appeal is denied.

Respectfully submitted,

.....

H. Gene Hunsaker, Chairman

.....

Richard Kimbel, Secretary

.....

Annalee Benedict

mb/opeiu-339
12/6/85

ARMSTRONG
GRIEVANCE REPORT
A

Grievance No.

To General Foreman or Superintendent Bryant Reed Date 02-12-86

Aggrieved Employee All employees on list appended as Exhibit A Clk. No.

Agreement Involved: Uniform ☒ Local Supplement ☐ Wage ☐ Welfare ☐ S. U. B. ☐ None ☐

Contract Clause Involved: Article VIII/XIV Section 18/56 Paragraph None

Date Grievance Occurred Effective date of Hanford agreement and date of Nashville layoffs Shift Foreman

STATEMENT OF GRIEVANCE

In a document dated October 3, 1985, Armstrong Rubber Company entered into a memorandum of agreement with Hanford Local 703 providing for an across-the-board wage reduction of $2.89 per hour at Hanford. This agreement was then put into effect without securing the approval of the majority of the Union Locals representing a majority of the membership, and was, therefore, in violation of section 18 and 56 of the 1985 Uniform Agreement. As a direct result of this action, the 64 employees listed in Exhibit A were wrongfully laid off from the Nashville plant on December 10, 1985.

Henry R Dickson
Signature of Aggrieved Employee

Don P. Grossi
Bobby Rinehart
Signature of Steward

A87

AGREEMENT
BETWEEN
THE
ARMSTRONG
RUBBER COMPANY
AND
UNITED RUBBER
WORKERS

July 14, 1985

(Pages 10 Through 17)

* * *

ARTICLE VI

Grievance Procedure

Section 8—Definition and Steps of Grievance Procedure

(a) A grievance is a complaint, dispute, or controversy in which it is acclaimed that the Company has failed to comply with an obligation assumed by it under the terms of this Agreement of the supplements thereto, and which involved either (1) a dispute as to the facts involved; (2) a question concerning the meaning, interpretation, scope, or application of this Agreement or the supplements thereto, or (3) both.

(b) The parties to this Agreement recognize that the grievance should be settled promptly and as close to the source as possible. Further, both parties will endeavor to present all the facts relating to the grievance at the first step in the grievance procedure.

(c) The Company at each of its local plants will recognize a Local Union Negotiating Committee of not more than seven (7) members as the accredited repre-

sentatives of the Local Union in grievance matters. Present practice at Des Moines will be continued.

(d) The steps in the grievance procedure shall be as follows:

STEP 1. An employee having a grievance *should present it as promptly and as close to the alleged infraction as possible* either to his Senior Foreman and/or Foreman or the Departmental Steward and/or Divisional Steward. The Departmental Steward and/or Divisional Steward, if a grievance is first presented to him, shall meet with the Senior Foreman and/or Foreman, and collectively they shall *promptly* attempt to reach a settlement satisfactory to the aggrieved employee. In the event the Senior Foreman and/or Foreman shall receive a grievance directly from an individual or group of individuals, the Departmental Steward and/or Divisional Steward shall be called upon by the Senior Foreman and/or Foreman to be present at any discussions held on the grievance. The Senior Foreman and/or Foreman shall give his verbal answer within one (1) working day.

STEP 2. Any grievance not satisfactorily settled in Step 1 shall be reduced to writing on the grievance forms supplied by the Company, and presented to the Divisional Superintendent and/or Senior Foreman by the Departmental Steward and/or Divisional Steward or, in the absence of these, an officer of the Local Union. The Divisional Superintendent and/or Senior Foreman shall give his written answer within three (3) working days. The grievance must be fully explained on the grievance form and bear the signature of the aggrieved employee or employees and the Departmental Steward and/or Divisional Steward or officer of the Local Union. A copy will be mailed to the President of the Local Union.

STEP 3. Failing satisfactory settlement of the grievance in Step 2, the Departmental Steward and/or Divisional Steward shall turn the grievance over to the Local Union Negotiating Committee. The Local Union Negotiating Committee, assisted if they desire by a representative of the International Union, shall take the grievance up with the Company's Industrial Relations Manager, who may be joined by other representatives of management, and shall give his written answer within five (5) working days after the final meeting with the Local Union Negotiating Committee, subject to the necessary exceptions on which mutual agreements will be reached. Grievances shall not be presented to the Company's Industrial Relations Manager, except within ten (10) working days after disposition in Step 2, and unless the grievance shall have been reduced to writing and fully described on the form supplied by the Company, signed by the aggrieved employee or employees, the Departmental Steward and/or Divisional Steward or officer of the Local Union with the disposition thereof by the Divisional Superintendent and/or Senior Foreman indicated thereon. Grievances that are not appealed to Step 3 within ten (10) days after disposition has been given in Step 2 shall be considered as settled.

Section 9—Paid Grievance Time and Miscellaneous Rules

(a) An employee who is designated Local Union representative shall be compensated at his hourly rate or, in the case of an incentive employee, his average hourly earnings or A.I.E., whichever is higher, plus all premium pay for time lost from his regular shift because of attending scheduled meetings for the discussion of employee problems and/or the negotiation of grievances (including

arbitration hearings or meetings). An employee who is designated Local Union Time Study Engineer will be compensated at his hourly rate, or in the case of an incentive employee, his average hourly earnings or A.I.E., whichever is higher, plus all premium pay for time lost because of making time studies, the working up of his time studies and comparing the results of such studies with management.

(1) However, a union representative who attends to union business consistent with the past practice outside his regular shift will be excused from work on his regular shift that day and paid as above.

(2) Union representatives who perform authorized union business on Saturday will receive overtime pay, providing they or their classification is scheduled.

(Letter #11)

S-3 One hundred and ten percent (110%) E.I.E. will be used for payment of incentive employees instead of average hourly earnings.

(b) The maximum number of hours paid each week by the Company will be no more than eleven and one-half (11-1/2) hours for each one hundred (100) employees employed in the bargaining unit. The computation will be made on the basis of the number of employees in the bargaining unit during the first full week of each month rounded to the next even one hundred (100). This computation shall determine the maximum number of hours to be paid for during the week on which the computation is based and for each subsequent week prior to the first full week of the next succeeding month. If the total hours paid for by the Company in a week shall be added to

the maximum number of hours applicable to the next succeeding week. In addition to the above calculation, hours shall also be added weekly on the following basis: to Des Moines — eighty (80) hours; *West Haven — per local agreement;* Natchez — sixty-five (65) hours; Nashville — fifty-five (55) hours; and Hanford — fifty-five (55) hours.

(1) In the event of a complete plant closure, the Local Union Benefit Representative, upon written request from the Local Union, will be paid his regular rate up to a maximum of forty (40) hours per week for a maximum of six (6) consecutive weeks immediately following the closure for the purpose of assisting former plant employees on benefit matters.

(c) Local Union representatives who lose time from work attending meetings called by management shall be compensated for time lost in the same manner as provided in Paragraph (a). This payment shall be exclusive of the payment provided in Paragraph (b).

(d) The Industrial Relations Manager, who may be joined by other representatives of management, shall meet with the Local Union Negotiating Committee, on a weekly basis, unless mutually agreed to otherwise, provided a grievance form shall have reached him in regular course indicating that a grievance has not been settled satisfactorily in the initial steps of the grievance procedure, or provided there is then any grievance as to which the required period of settlement in Step 2 shall have expired without action. It is understood, however, that grievances relating to discharges and layoffs or other matters which cannot reasonably be delayed until the time of the next regular meeting with the Industrial Relations Manager

may be presented at any time in accordance with the foregoing provisions and disposition thereof shall be made by the Industrial Relations Manager. Provisions for meetings between the Local Union Negotiating Committee and the Company's Industrial Relations Manager at Step 3 of the grievance procedure shall be negotiated at each local plant level and shall become part of the local supplemental agreements.

S-4 Step 3 Grievance Meetings shall be held every Thursday at 12:30 P.M., except where the aggrieved employee is on the graveyard shift. In those instances, the meetings will be held every other Thursday at 7:30 A.M. It is understood that the meetings will be scheduled only if there are grievance(s) actually on file pending such a meeting. Meetings at other times and/or days may be arranged by mutual agreement.

(Letter #3)

(e) In cases where Local Union representatives leave their jobs in connection with the grievance procedure, the foreman shall be given reasonable notice in order to make necessary replacements.

(f) The President of the Local Union and the Local Union Negotiating Committee shall be issued passes to enter the plant on all shifts. Upon entering the plant they will sign the register at the gate house stating the department or employee they are visiting and shall notify the foreman of the department upon entering and leaving.

(g) Any member of the Local Union Negotiating Committee shall be permitted to enter the plant for the purpose of making an investigation of any grievance. He shall contact the foreman of the department upon entering

to inform him of the visit and advise the foreman upon leaving.

(h) The Local Union will submit a list of all officers and stewards and will keep such list up to date and the Company will not recognize anyone who presumes to act as an officer or steward until official notification of his election or appointment as such has been reecived by the Company from the Local Union. The Company shall furnish a list of its members acting in an official capacity, executives and management personnel, to the Local Union and shall keep such list up to date.

(i) An employee will have a local union representative appear with him when he is required to appear before a representative of management for the purpose of a formal investigation which could lead to discipline or for the purpose of receiving a reprimand, suspension, or discharge. Upon request, an employee will have a local union representative appear with him when he is required to appear in the office of a representative of management.

(j) Grievances involving discharges shall be negotiated through the grievance procedure beginning at Step 3, providing a written grievance is filed with the Industrial Relations Manager within seven (7) calendar days after notification is received by the Local Union President or his designated alternate, excluding Sundays and holidays, after such discharge.

If the Union is prevented from investigation of circumstances surrounding the discharge of an employee because of the hospitalization of the employee concerned (or similar circumstances which deprive the Union of contact with the employee), the Company will, at the request of the Local Union President, extend such period

for filing a grievance for a period of time appropriate to the circumstances. The Local Union President or his designated representative will be notified promptly when an employee has been discharged. All such extensions shall be in writing.

(k) If the Company fails to give its written answer within the time limits provided above, the grievance may be appealed immediately to the next step of the grievance procedure.

(l) In the case of a dispute involving an incentive time standard or standard practice the Company, upon request by the Local Union, will permit a Time Study Engineer, approved by the Local Union or the International Union, to enter the plant for the purpose of making studies of the incentive time standard or standard practice in dispute as well as operations or jobs relating thereto to secure the necessary information in order that the Local Union may be in a position to properly present its case. The Company further agrees to make available to him all data and information pertaining to the establishment of its incentive standards or standard practice on the operation or job in dispute or the jobs relating thereto. The Time Study Engineer designated by the Local Union or the International Union shall report to the Industrial Relations Manager or his alternate, who may assign a company representative to accompany the designated Time Study Engineer.

(1) The time limits imposed on the Local Union in Section 8 of Article VI shall not apply, providing the Local Union notifies the Company within the time limit period that it has requested the services of a Time Study Engineer.

(2) After the Time Study Engineer has made his necessary time studies and comparisons, the results of his findings shall be presented to the Local Union as soon as practicable thereafter. The Local Union shall, within the appropriate time period as provided by Section 8 of Article VI, after receipt of the Time Study Engineer's findings notify the Industrial Relations Manager of its intentions to process or not to process the grievance further in that step of the grievance procedure.

* * *

No. 87-765

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ARMSTRONG RUBBER COMPANY; R. G. DeANGELO; and RUSSELL WEYMOUTH,

Petitioners,

vs.

LOCAL 670, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO; INTERNATIONAL UNION, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO; MILAN STONE; BOB G. LONG; and LOCAL 703, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals For the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

MICHAEL J. PASSINO

PASSINO, DeLANEY & HILDEBRAND
Second Floor, St. Cloud Corner
500 Church Street
Nashville, Tennessee 37219
(615) 244-3531

Attorneys for Respondents

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

QUESTIONS PRESENTED

1. Whether A Challenge To Concurrent Findings That A Grievance Is Arbitrable Presents A Question For Review.

2. Whether The Decision Of The Sixth Circuit Or Its Practical And Particularized Analysis Of Rule 19(b) Factors Conflicts With Decisions In Other Circuits.

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No.

IN THE

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OCTOBER TERM, 1987

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Petitioners,

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LOCAL 670, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO; INTERNATIONAL UNION, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO; MILAN STONE; BOB G. LONG; and LOCAL 703, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals For the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Local 670, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Sixth Circuit's opinion, which is reported at 822 F.2d 613.

STATEMENT OF THE CASE

Respondent Local 670 adopts the statement of the Sixth Circuit,[1] emphasizing two matters pertinent here. First, Local 670 and four other local unions were parties to a nationwide collective bargaining agreement with Armstrong Rubber Company. The Agreement locked in wages[2] and permitted amendments only upon majority approval of the membership of the five locals.[3] Thus, the grievance of Local 670 challenging the company's implementation of a $2.89 per hour wage cut in California (Local 703) despite two nationwide votes rejecting the amendment squarely presented a contractual issue.

Second, after the district court concluded that Local 703 was a person to be joined if feasible under F.R.Civ.P 19(a), Local 670 issued a summons and complaint. Local 670 also wrote Local 703, offering to allow Local 703 to participate in the arbitration and agreeing to conduct the arbitration in California. Local 703 did not respond to this offer and the trial court gave no consideration to this proposal in holding that Local 703 was indispensable.

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[1] 822 F.2d at 615-17. (Appendix to Petition, at 59).

[2] *Id.* at 618 n. 3 (quoting Article XIV, Section 56 of the Agreement).

[3] *Id.* (quoting Article XIV, Section 56 of the Agreement).

REASONS FOR DENYING WRIT

I.

The Concurrent Findings Of The Lower Courts That The Grievance Is Arbitrable And The Absence Of Any Evidence To The Contrary Render Review Of This Issue Improper.

Both the district and appellate courts concluded that the grievance challenging the wage reduction as violative of the Agreement was arbitrable.[4] Armstrong offered no evidence below, much less forceful evidence,[5] in support of its assertion to the contrary. Now, Armstrong invites this Court to reinterpret the contract and suggests that is reconsider the assertion below that this grievance related solely to an internal union dispute. While arbitrability is a legal conclusion, the challenge to that conclusion here is based on a redetermination of facts previously adjudicated. It is settled that review of such concurrent findings by writ of certiorari is inappropriate.[6]

II.

Given The Practical And Particularized Inquiry Mandated By F.R.Civ.P. 19(b), The Sixth Circuit's Conclusion That A California Union Is Not Indispensable To An Action In Tennessee To Compel Arbitration Does Not Conflict With Decisions In Other Circuits Or Depart From Precedent.

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[4] 822 F.2d at 617-18, *citing United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 367 U.S. 574, 582-83 (1960).

[5] *A.T.&T. Technologies Inc. v. Communication Workers of America*, 475 U.S. 643, 106 S.Ct. 1415, 1419, 89 L.Ed.2d 648 (1986).

[6] *Branti v. Finkel*, 455 U.S. 507, 512 n. 6 (1980).

Long before the 1966 amendments to rule 19, this Court recognized that the talismanic invocation of the interests of nonparties should not bar litigants before the court from a complete determination on the merits.[7] The express provisions of the 1966 amendments and the comments thereto serve only to emphasize this fundamental concern, highlighting the necessity to evaluate each case practically, including the fashioning of alternatives to dismissal.[8]

Rule 19(b) identifies the principal factors that must be considered in determining whether to proceed in the absence of a person. The nature of these factors compels courts to engage in a case-by-case analysis[9] of both the substantive and procedural interests implicated by the absence of a party as well as the weight to be accorded those interests.[10] At bottom, the focus is practical:

> Rule 19 does not prevent the assertion of compelling interests; it merely commands the courts to examine each controversy *to make certain that the interests really exist.*[11]

Here, the Sixth Circuit complied strictly with the command of rule 19. First, the court identified the substantive interest at stake, namely the "compelling federal labor policy of requiring

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[7] *Shields v. Barrow*, 17 U.S. (How.) 130, 142 (1854) (interest of nonparty should not bar complete decision as to litigants).

[8] *Provident Tradesmen Bank & Trust Co. v. Patterson*, 390 U.S. 102, 111-12 (1968) (F.R.Civ.P. 19(b) (requires consideration of solutions to "joinder stymie").

[9] 390 U.S. at 118 n. 14 *and text.*

[10] *Id.* at 119.

[11] *Id.* (emphasis added).

parties to honor their promises to arbitrate."[12] Second, in view of this interest and the asserted interests of the company and the California local, the court evaluated whether Local 703 was a person to be joined if feasible. While the court considered it highly questionable that Local 703 qualified as a person to be joined under rule 19(a), it presumed that it did. Proceeding to an analysis of the largely undisputed facts applicable to each of the factors in subsection (b), the court then concluded that the interest of Local 703 — its presence in the arbitration proceeding — would be adequately protected by allowing it to participate in the arbitration. Given this, the Sixth Circuit held that the trial court had misapprehended the interests of Local 703 and, consequently, the weight to be accorded, those interests in light of the considerations mandated by rule 19(b).[13]

Armstrong's assertion that the decision below adopts a standard of review in conflict with the abuse of discretion standard in other circuits ignores the Sixth Circuit's express recognition that prior decisions in the circuit had "implicitly adopted the abuse of discretion standard for Rule 19 issues."[14] Armstrong's asserted conflict also evidences a misunderstanding about the role of an appellate court when applying the abuse of discretion standard; such review is aimed at determining whether the trial court exceeded its discretion or erred as a matter of law.[15] Finally, even assuming that the Sixth Circuit applied a lower standard of review than that urged by Armstrong, the result is correct

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[12] 822 F.2d at 619, *citing, Carey v. Westinghouse Electric Corp.*, 375 U.S. 261, 265 (1964). *See also In re Meba Pacific Coast District*, 114 L.R.R.M. 3431, 3436 (D.C.Cir. 1983).

[13] 822 F.2d at 619, 621-22.

[14] 822 F.2d at 618-19.

[15] *Beck v. Wings Field, Inc.*, 122 F.2d 114, 116 (3d Cir. 1941); *cf. Cohen v. Young*, 127 F.2d 721, 725 (6th Cir. 1942) ("discretion" implies absence of hard-and-fast rule, not that decision nonreviewable).

under either standard. Specifically, the Sixth Circuit concluded that the district court had incorrectly identified the interests at stake; this error infected the district court's ensuing analysis. The Sixth Circuit then conducted a detailed inquiry as to each rule 19 factor,[16] concluding that when the correct interests were analyzed, it was clear that the absent local union was not an indispensable party to the action to compel arbitration.[17] Put differently, neither the decision nor the analysis of the Sixth Circuit here conflicts with decisions in other circuits or departs from precedent.

CONCLUSION

For the above reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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[16] Comparison of the abuse of discretion cases cited by Armstrong compels the conclusion that the asserted conflict is hypothetical, not real. The Sixth Circuit's analysis precisely parallels rule 19 decisions applying the abuse of discretion standard. *See, e.g., Steel Valley Auth. v. Union Switch Land Signal Div.*, 809 F.2d 1006, 1010-11 (3d Cir. 1987). Also, the scope and manner of review in other cases was perhaps affected by procedural issues. *Costal Modular Corp. v. Laminators, Inc.*, 635 F.2d 1102 (4th Cir. 1980) (appeal of judgment); *General Tire & Rubber Co. v. Watkins*, 326 F.2d 9216 (4th Cir. 1964) (mandamus). *But see Walsh v. Centeio*, 692 F.2d 1239, 1241 (9th Cir. 1982) (standard of review determines outcome).

[17] When, as here, the facts are undisputed, it is settled that appellate review is broader. *E.g., Horn v. O. L. Osborn Contracting Co.*, 591 F.2d 318, 320 (5th Cir. 1979); *Flannery Bolt Co. v. Flannery*, 86 F.2d 43 (3d Cir. 1936).